TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 685

HOWARD S. PALMER, JAMES LEE LOOMIS AND HENRY B. SAWYER, TRUSTEES, ETC., PETITIONERS,

vs.

THE COMMONWEALTH OF MASSACHUSETTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 17, 1939.

CERTIORARI GRANTED MARCH 27, 1939.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 685

HOWARD S. PALMER, JAMES LEE LOOMIS AND HENRY B. SAWYER, TRUSTEES, ETC., PETITIONERS,

vs.

THE COMMONWEALTH OF MASSACHUSETTS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

INDEX.

	Original	Print
Proceedings in U. S. C. C. A., Second Circuit	1	1
Statement und. Rule XIII	1	1
Record from D. C. U. S., District of Connecticut	4	3
Petition for an order directing the Trustees of the Principal Debtor and of Old Colony Railroad Company to effect certain operating economies on the lines of Old Colony Railroad Company, debtor	4	3
Order of notice on petition for order directing the Trustees of the Principal Debtor and of Old Colony Railroad Company to effect certain operating economies on the Old Colony Lines	13	9
Answer of Trustees of Principal Debtor and of Old Colony Railroad Company to petition of Mutual Savings Bank Group Committee on New Haven Railroad Bonds, the Protective Committee of Shareholders of Old Colony Railroad Company and of Old Colony Railroad Company to effect certain operating economies on Old Colony Lines	15	10
Exhibit "A"—Proposed changes and modifications in passenger service on Old Colony and New England Lines	21	14
Exhibit "B"—List of stations	26	21

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 3, 1939.

—919

	Original	Print
Record from D. C. U. S., District of Connecticut—Continued.		
Appearance of Commonwealth of Massachusetts	27	22
Findings of fact, memorandum of decision and order on petition for Order 289	28	22
Petition to stay execution and enforcement of Order No. 289	36	28
Statement of the evidence	37	28
Caption	37	28
Opening statement by counsel for the Savings Bank Group Committee	37	28
Offers in evidence:		
Petition of New Haven for reorganization	38	29
Order approving petition for reorganization	38	29
Order appointing trustees	40	30
Lease by Old Colony R. R. Co. to the N. Y., N. H. & H. R. R. Co.	41	31
Lease of Boston and Providence R. R. Corp. to Old Colony R. R. Co.	42	32
Report of mailing of notice of disaffirmance of lease	42	32
Petition of Old Colony for reorganization	42	32
Order No. 74 approving petition of Old Colony R. R. Co. for reorganization	44	33
Order No. 75 appointing trustees of Old Colony R. R. Co.	45	34
Order No. 17 re payments under terms of lease	48	36
Order of reference to I. C. C. for its recommendations, etc.	49	37
Report of I. C. C. on order of reference	50	38
Order confirming report of I. C. C.	51	38
Report of administration of property of Old Colony R. R. Co. and of Providence Warren and Bristol R. R. Co.	51	39
Exhibit 1—Summary of accounts covering administration of the property of Old Colony Railroad Company	54	41
Exhibit 2—Summary of accounts covering administration of the property of Providence, Warren & Bristol Railroad Company for the period June 4, 1936 to December 31, 1937	55	42
Memorandum on trustee's report of administration	56	43
Testimony of Harry W. Dorigan	57	44
George T. Carmichael	66	51
Frank J. Wall	69	54
Wm. J. Cunningham	77	60
Stanley F. Mackay	83	65
Henry M. Erving	88	69
Charles F. Caley	90	71
Stipulation re proceedings pending before Department of Public Utilities	96	76

Record from D. C. U. S., District of Connecticut—Continued.
Statement of the evidence—Continued.
Exhibits:

	Original	Print
1—Map prepared by Public Utilities Commission of Massachusetts and colored by New Haven representatives	97	76
2—Statement of segregated revenues and expenses for year ending May 31, 1937, for Old Colony System	98	77
3—Statement of segregated revenues and expenses, year 1937, Old Colony System	99	78
4—Tabulation showing separation of segregated revenues and expenses between freight and passenger services, Old Colony Railroad, year 1937	100	80
6—Book entitled "Survey of Old Colony System Operations" (omitted pursuant to stipulation and order)	101	80
7—Estimated Summary of Accounts covering administration of the property of Old Colony Railroad Company for period January 1st to June 30, 1938	101	80
8—Tabulation, dated February 21, 1938 showing Massachusetts passenger car registrations and total passengers into and out of Boston for the years 1917 through 1937, inclusive	102	81
9—Chart of density of passenger traffic for local passenger trains only, based on passengers per day, Monday to Friday average, October 4 through October 8, 1937	103	82
10—Railroad passenger and highway vehicular traffic density map of southeastern Massachusetts	104	82
11—Tabulation of local passenger service east of Boston Switch, Rhode Island and Blackstone, Massachusetts, and revenues and expenses for the representative month, October, 1937	106	83
12—Tabulation of estimated savings per annum from proposed changes in train service and station elimination in territory east of Boston Switch, Rhode Island and Blackstone, Mass., together with other possible savings, further separated between Old Colony Railroad, Boston & Providence Railroad and other New Haven Railroad Lines	107	84
13—Statement prepared by Henry M. Erving, showing the stations to be abandoned in territory east of Providence, Rhode Island and Blackstone, Mass., with record of average passengers and the miles by highway to the nearest railroad station	108	84

	Original	Print
Record from D. C. U. S., District of Connecticut—Continued.		
Statement of the evidence—Continued.		
Exhibits—Continued.		
14—Statement of revenues and expenses from ticket sales and cash transfers for the month of October, 1937, at each of the 88 stations in Massachusetts (omitted pursuant to stipulation and order)	109	86
Petition for appeal and order allowing appeal	110	86
Exhibit "B"—List of stations	116	90
Exhibit "C"—Order, dated July 9th, 1938	117	91
Assignment of errors	118	91
Citation (omitted in printing)	120	
Appellant's praecipe for transcript of record	122	92
Appellant's petition for extension of time for filing transcript of the record	125	95
Order extending return day of citation to October 2, 1938	127	95
Stipulation extending return day of citation to October 31, 1938	128	96
Order extending return day of citation to October 31, 1938	130	96
Order extending return day of citation to November 7, 1938	131	97
Stipulation extending return day of citation to November 7, 1938	132	97
Order of Circuit Court granting leave to appeal	133	98
Stipulation as to exhibits	134	98
Order as to exhibits	136	99
Stipulation as to record	137	100
Clerk's certificate (omitted in printing)	139	
Opinion, Hand, J.	140	101
Dissenting opinion, Swan, J.	144	106
Decree	146	108
Clerk's certificate (omitted in printing)	148	
Order allowing certiorari	149	109

[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

In Proceedings for the Reorganization of a Railroad

In the Matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor

COMMONWEALTH OF MASSACHUSETTS, Petitioner-Appellant,
against
MUTUAL SAVINGS BANK GROUP COMMITTEE ON NEW HAVEN RAILROAD BONDS, et als., Respondents

STATEMENT UNDER RULE XIII

The New York, New Haven and Hartford Railroad Company commenced these proceedings on October 23, 1935 by filing in the United States District Court for the District of Connecticut, a petition for its reorganization under Section 77 of Chapter VIII of the Acts of Congress relating to Bankruptcy, as amended. Honorable Carroll C. Hincks, Judge for the United States District Court for the said District, on the same day entered an order approving said petition as properly filed, and on November 8, 1935 entered another order appointing Howard S. Palmer, James Lee Loomis and Winthrop N. Daniels trustees of the property of the New York, New Haven and Hartford Railroad Company. Said trustees were confirmed by the Interstate Commerce Commission and later qualified under the provisions of said Section 77.

On June 2, 1936, the Old Colony Railroad Company filed in the United States District Court for the District of Connecticut its petition for reorganization under said Section 77. On the next day, Honorable Carroll C. Hincks entered an order approving said petition as properly filed, and on June 18, 1936, the said Judge entered another order [fol. 2] appointing Howard S. Palmer, James Lee Loomis and Winthrop N. Daniels trustees of the properties of the Old Colony Railroad Company. Said trustees were confirmed by the Interstate Commerce Commission and later qualified under the provisions of said Section 77.

On February 24, 1937, the Honorable Carroll C. Hincks entered an order relieving the said Winthrop N. Daniels

of further responsibility and trust as a trustee of the estate of the New York, New Haven and Hartford Railroad Company and of the Old Colony Railroad Company and on March 10, 1937 the said Judge entered another order appointing Henry B. Sawyer as trustee of the estate of the said New York, New Haven and Hartford Railroad Company and the Old Colony Railroad Company to succeed the said Winthrop N. Daniels. The said Henry M. Sawyer was later confirmed by the Interstate Commerce Commission and later qualified under the provisions of said Section 77.

In connection with the said reorganization proceedings, the Mutual Savings Bank Group Committee on New Haven Railroad Bonds, the Protective Committee of the Shareholders of Old Colony Railroad Company and the Old Colony Railroad Company, Debtor, filed a petition in the United States District Court for the District of Connecticut for Order No. 289 with which petition this appeal is concerned.

The original parties to the petition for Order No. 289 were as follows: for the petitioners: Myron F. Converse Theron A. Apollonio, John W. B. Brand, Robert C. Glazier, Charles F. Mann, Thomas W. Murray, Charles A. Post and George H. Woods as they constitute the Mutual Savings Bank Group Committee on New Haven Railroad Bonds; G. Peabody Gardner, Jr., William Dexter, E. Sheldon Stewart, Eugene S. Taliaferro and Alexander Whiteside as they constitute the Protective Committee of the Shareholders of Old Colony Railroad Company; and the Old Colony Railroad Company. For the respondents: Howard S. Palmer, James Lee Loomis and Henry B. Sawyer. The Commonwealth of Massachusetts appeared generally [fol. 3] in opposition to the said petition. The Bank of New York, Trustee under The New England Railroad Company Consolidated Mortgage, and the Bankers Trust Company, Trustee under the first and Refunding Mortgage of the New York, New Haven and Hartford Railroad Company filed appearances.

The appellant herein is the Commonwealth of Massachusetts. The appellees herein are the Mutual Savings Bank Group Committee on New Haven Railroad Bonds, the Protective Committee of the Shareholders of Old Colony Railroad Company Howard S. Palmer, James Lee Loomis and Henry B. Sawyer, Trustees of the property of The New York, New Haven and Hartford Railroad Company and of

Old Colony Railroad Company and the Old Colony Railroad Company.

In the original reorganization proceedings of the New York, New Haven and Hartford Railroad Company and of the Old Colony Railroad Company many have entered their appearances, but in the proceedings relating to this appeal, except as above stated, no other has become a party before this appeal.

The petition for Order No. 289 was filed on June 20, 1938. The answer of the trustees to the said petition was filed on June 27, 1938. Trial of the issues therein was commenced before the Honorable Carroll C. Hincks, Judge of the United States District Court, for the District of Connecticut, on July 7, 1938; continued on July 8, 1938 and concluded on the latter date.

No question relating to the said petition for Order No. 289 was referred, no interlocutory decree was entered therein, and no attachment or order of arrest has been issued.

On July 9, 1938 the final order therein was entered and on August 2, 1938 the appeal was taken and was allowed.

On August 1st, 1938, the Commonwealth of Massachusetts also filed in the Circuit Court of Appeals for the Second Circuit a petition for leave to appeal from said order No. 289. This petition was heard and allowed by the said Circuit Court of Appeals on October 11, 1938, an order, dated October 11, 1938 was entered thereon.

[fol. 4] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

No. 16562

In the Matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor

PETITION FOR AN ORDER DIRECTING THE TRUSTEES OF THE PRINCIPAL DEBTOR AND OF OLD COLONY RAILROAD COMPANY TO EFFECT CERTAIN OPERATING ECONOMIES ON THE LINES OF OLD COLONY RAILROAD COMPANY, DEBTOR

Petition for Order No. 289

To the Honorable the Judges of the United States District Court for the District of Connecticut:

The petition of Myron F. Converse, Theron A. Apollonio, John W. B. Brand, Robert C. Glazier, Charles F. Mann,

Thomas W. Murray, Charles A. Post and George H. Woods, as the Mutual Savings Bank Group Committee on New Haven Railroad Bonds; George Peabody Gardner, Jr., William Dexter, E. Sheldon Stewart, Eugene S. Taliaferro and Alexander Whiteside, as the Protective Committee of the Shareholders of Old Colony Railroad Company; and Old Colony Railroad Company, Debtor, respectfully shows:

[fol. 5] Old Colony Railroad Company, hereinafter referred to as Old Colony, one of the petitioners herein, is a railroad corporation organized under the laws of The Commonwealth of Massachusetts and under the laws of The State of Rhode Island and Providence Plantations. It owns and is or has been lessee of railroads in Massachusetts and in Rhode Island and, by an indenture dated February 15, 1893, it leased its railroad and other properties to the Principal Debtor.

2. On June 1, 1936, the Trustees of the Principal Debtor gave notice to Old Colony of their rejection of said lease; and thereafter, on June 3, 1936, Old Colony filed in these proceedings its petition for reorganization (Petition for Order No. 74 at pp. 731-745 of the printed record). The petition prayed, among other things, that the Court take and exercise its jurisdiction over the property and affairs of Old Colony and make such orders and decrees as might be proper, necessary or incidental to such reorganization, and that meanwhile the Trustees of the Principal Debtor be authorized and directed to operate until further order the property of Old Colony for its account.

3. By Order No. 74 in these proceedings this Court approved the said petition of Old Colony for reorganization herein; and by Order No. 75 in these proceedings this Court appointed Trustees of the properties of Old Colony and directed the Trustees of the Principal Debtor to operate the properties of Old Colony, such operation to be for the account of Old Colony or the Trustees of its property. Since that time said Trustees of the Principal Debtor have operated the properties of Old Colony and have from time to time advanced funds necessary to meet deficits incurred in operation; and said Trustees of the Principal Debtor assert the claim that said advances for such deficits [fol. 6] incurred in the operation of the properties of Old Colony are chargeable as a prior lien against said properties.

4. The petitioners are informed and believe and therefore aver that the Trustees of the Principal Debtor made or caused to be made certain preliminary studies of the operating results of the properties of Old Colony for the purpose of determining whether said lease was burdensome and should be rejected, and that upon the basis of said studies said Trustees concluded that Old Colony properties were being operated at substantial deficits and that such deficits were incurred in furnishing local passenger and commuting passenger service.

5. The petitioners herein constituting the Mutual Savings Bank Group Committee, after a consideration of these preliminary studies and of certain so-called segregation studies, requested, by letter dated January 19, 1937, that the Trustees make a further study and survey of Old Colony operating conditions to determine methods of effecting economies in the operation of Old Colony properties. Pursuant to this request and to similar requests made orally or in writing by various persons, including others of the petitioners, the Trustees made or caused to be made a study of Old Colony system operations, the results of which were embodied in a report dated September 3, 1937, prepared by officers and employees of the Trustees of the principal Debtor and entitled "Survey of Old Colony System Operations." This survey showed that substantial operating economies, estimated to amount annually to approximately $930,790 for the Old Colony and $187,711 for its leased line, Boston and Providence Railroad Corporation, or a total of $1,118,501 for the roads then constituting the Old Colony system, could be effected in the operation of Old Colony properties by means of certain changes in pas- [fol. 7] senger train operations involving the discontinuance and alteration of passenger service, all of which is set forth in detail in said Survey.

6. The petitioners are informed and believe and therefore aver that the Trustees of the Principal Debtor, in accordance with the recommendations contained in said Survey, on December 28, 1937, made application to the Department of Public Utilities of the Commonwealth of Massachusetts, pursuant to provisions of Massachusetts General Laws, Chapter 160, Section 128, for the written approval of said Department to the abandonment of eighty-eight local passenger stations; that the said Trustees fur-

ther seasonably advised the said Department of Public Utilities of time-tables proposed to be effective March 27, 1938, which contemplated the discontinuance of certain trains and certain rearrangements in train service; that thereupon the said Department of Public Utilities, on its own motion, entered into an investigation and ordered hearings which were combined with the hearings ordered by said Department on the petitions of the said Trustees relating to the abandonment of eighty-eight passenger stations; that hearings on these matters were begun before said Department on February 23, 1938, and have continued from time to time, approximately twenty such hearings having been had; and that such hearings may continue for a considerable period.

7. The petitioners are informed and believe and therefore aver that the jurisdiction of said Department of Public Utilities over the matter of discontinuing train service or rearrangement of train schedules (meaning thereby the number of trains operated and the fixing of the times of arrival and departure) exists under Massachusetts General Laws, Chapter 159, Section 16; and that the jurisdiction of [fol. 8] said Department of Public Utilities over the matter of discontinuing certain stops of passenger trains exists under Massachusetts General Laws, Chapter 160, Section 128. The petitioners are advised and believe and therefore aver that under the provisions of said sections a considerable discretion is vested in the Trustees with respect to discontinuing or rearranging train service at any time.

8. The Trustees of the Principal Debtor in a "Report of Administration of Property of Old Colony Railroad Company and of Providence, Warren & Bristol Railroad Company up to and including December 31, 1937," filed herein and dated April 19, 1938, contended that operating deficits of Old Colony (not including lease lines) for the period October 24, 1935 to December 31, 1937 amounted to $4,419,179 and that total charges against Old Colony for that period, including so-called intra-system debits and credits, amounted to $5,775,650; that for the same period with respect to the Boston & Providence Railroad Corporation (leased to Old Colony) operating deficits amounted to $1,896,981 and total charges claimed against Old Colony with respect to the Boston & Providence amounted to $5,461,451. In said report total charges asserted by the

Trustees of the Principal Debtor against Old Colony with respect to operations for the period October 24, 1935 to December 31, 1937 amounted to $11,394,522, including $157,421 for the Providence, Warren & Bristol Railroad Company. While figures have not been made available to your petitioners for the period subsequent to December 31, 1937, it is believed by your petitioners that charges for said period (which will eventually be asserted against Old Colony) computed on the formula adopted by the Trustees of the Principal Debtor, are continuing at a rate at least as great; and that other studies made or caused to be made by the Trustees [fol. 9] of the Principal Debtor, some of which are generally known as "Severance Studies," indicate that this loss is attributable to local passenger operations. The petitioners are informed and believe and therefore aver that the Trustees of the Principal Debtor have caused to be presented in evidence before the Department of Public Utilities an exhibit (numbered 108 before the Department), prepared from studies based in general on the application of the segregation method adopted by said Trustees, which indicates that whereas the net railway operating income (as defined by the Interstate Commerce Commission in its uniform system of accounting) of Old Colony Railroad Company (not including the Boston and Providence lines) from freight operations for the calendar year 1937 was $275,278.51, the net railway operating deficit (as so defined) from passenger operations on said lines for the same period was a loss of $2,636,140.80.

9. The petitioners are informed and believe and therefore aver that the facts alleged in paragraph 8 hereof indicate that the capital and assets of Old Colony are being consumed by unprofitable local passenger operations which, if continued upon their present basis, will (1) impair the ability of Old Colony to render service to the public which it serves in southeastern Massachusetts and Rhode Island, (2) confiscate the interests of the creditors and shareholders of Old Colony, (3) impede the carrying out of any reorganization of Old Colony; that an emergency exists and it is essential that every possible step be taken immediately to eliminate unnecessary operating losses and to effect every possible operating economy upon the lines of Old Colony and that such steps should not be further delayed; and that for the purpose of expediting the reorganization proceedings

now pending before this Court the present situation should be brought to the attention of the Court, to the end that the [fol. 10] Trustees of Old Colony and of the Principal Debtor shall be directed by the Court to effect economies and to decrease operating losses.

10. The petitioners are informed and believe and therefore aver that substantial savings in the cost of operation can be effected by the prompt discontinuance of trains and by a rearrangement of train service as proposed in said time tables of March 27, 1938, or in some other suitable manner; that many elements of present conditions affecting the operation of local passenger service as presently operated on the lines of Old Colony are not merely temporary but are such that there is no reasonable prospect of an early change, and that such operation is consuming the corpus of the estate and is confiscatory.

Wherefore your petitioners respectfully pray:

(1) That this Court issue an order of notice directing (a) that the Trustees of the Principal Debtor and of Old Colony shall file with this Court on or before a date designated in said Order of Notice a full statement of their recommendations as to the changes and modifications in the passenger service now rendered on the lines of Old Colony, and as to any other operating economies on said lines, which said Trustees believe can and should be presently put into effect in the interest of preserving the assets of the estate of Old Colony and its ability to serve the best interests of the public, (b) that copies of said Order of Notice and of this petition be served upon all parties to this proceeding and also upon the Attorney General of The Commonwealth of Massachusetts, and the Department of Public Utilities in said Commonwealth; and (c) that a date be set for a hearing upon this petition.

[fol. 11] (2) That this Court direct said Trustees to take all such steps, as after hearings shall to this Court appear to be desirable and proper, to effect economies in the operation of the railroads of Old Colony.

(3) That this Court grant such other and further relief as in the premises may be just and equitable.

Dated, June 20, 1938.

Myron F. Converse, Theron A. Apollonio, John W. B. Brand, Robert C. Glazier, Charles F. Mann,

Thomas W. Murray, Charles A. Post, George H. Woods, as They Constitute the Mutual Savings Bank Group Committee on New Haven Railroad Bonds, by Myron F. Converse, Chairman. G. Peabody Gardner, Jr., William Dexter, E. Sheldon Stewart, Eugene S. Taliaferro, Alexander Whiteside, as They Constitute the Protective Committee of the Shareholders of Old Colony Railroad Company, by Eugene S. Taliaferro, Vice-Chairman. Old Colony Railroad Company, by Oscar M. Shaw, Its Attorney. Fred N. Oliver, Willard P. Scott, [fol. 12] Solicitors for Mutual Savings Bank Group Committee on New Haven Railroad Bonds, 110 East 42nd Street, New York, New York. Robert G. Dodge, R. Ammi Cutter, Solicitors for Protective Committee of the Shareholders of Old Colony Railroad Company, 53 State Street, Boston, Massachusetts. Charles A. Coolidge, Jr., Oscar M. Shaw, Solicitors for Old Colony Railroad Company, 50 Federal Street, Boston, Massachusetts.

(Verification omitted in printing.)

[fol. 13] In United States District Court

[Title omitted]

Order of Notice on Petition for Order Directing the Trustees of the Principal Debtor and of Old Colony Railroad Company to Effect Certain Operating Economies on the Old Colony Lines

Upon reading the joint petition of the Mutual Savings Bank Group Committee on New Haven Railroad bonds, the Protective Committee of the Shareholders of Old Colony Railroad Company, and Old Colony Railroad Company for an order directing the Trustees of the property of the Principal Debtor and of Old Colony Railroad Company to effect certain operating economies on Old Colony lines, it is Ordered:

1. That the Trustees of the property of the Principal Debtor and of Old Colony Railroad Company be and they hereby are directed to file with this Court on or before June

27th, 1938, a statement of their recommendations as to the changes and modifications in the passenger service now rendered on the Old Colony lines and as to any other operating economies on said lines which said Trustees believe can [fol. 14] and should be presently put into effect in the interest of preserving the assets of the estate of Old Colony and its ability to serve the best interests of the public.

2. That the petitioners be and they hereby are directed to give notice of the filing of said petition by causing to be mailed or otherwise served copies of said petition and of this order to all parties who have been permitted to intervene generally herein or to their attorneys, to all others who are customarily notified of hearings in these proceedings, and also to the Attorney General of the Commonwealth of Massachusetts and the Department of Public Utilities of said Commonwealth on or before June 27th, 1938.

3. That said petition be and it hereby is set down for hearing at New Haven on July 7th, 1938 at 2:00 P. M., Daylight Saving Time, at which time and place all persons receiving notice of the foregoing petition may appear before this Court to show cause if any they have why the relief prayed for in said petition should not be granted.

Enter:

C. C. Hincks, District Judge.

Dated, June 20, 1938.

[fol. 15] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF TRUSTEES OF PRINCIPAL DEBTOR AND OF OLD COLONY RAILROAD COMPANY TO PETITION OF MUTUAL SAVINGS BANK GROUP COMMITTEE ON NEW HAVEN RAILROAD BONDS, THE PROTECTIVE COMMITTEE OF SHAREHOLDERS OF OLD COLONY RAILROAD COMPANY AND OF OLD COLONY RAILROAD COMPANY TO EFFECT CERTAIN OPERATING ECONOMIES ON OLD COLONY LINES

Now come Howard S. Palmer and Henry B. Sawyer, two of the three Trustees of the property of the Principal

Debtor herein and of the property of Old Colony Railroad Company, Debtor, and for their answer to the petition of the Mutual Savings Bank Group Committee on New Haven Railroad Bonds, the Protective Committee of the Shareholders of Old Colony Railroad Company, and Old Colony Railroad Company for Order No. 289 respectfully show:

1. They admit the allegations contained in said petition.

[fol. 16] 2. Further answering said petition, the Trustees of the Principal Debtor allege that

(a) in addition to the studies referred to in paragraphs 4 and 5 of said petition, they caused, among others, studies to be made of the operating results of local passenger service to and from Boston on lines of the Principal Debtor which are subject to the lien of the New England Railroad Company Consolidated Mortgage (said lines are hereinafter referred to as New England) located in the Commonwealth of Massachusetts which showed that such service was being operated at a substantial loss.

(b) the losses resulting from the operation of such service on New England amount to approximately $337,190 per year,

(c) of the 88 stations referred to in paragraph 6 of said petition, twenty-five are located on New England within the Commonwealth of Massachusetts,

(d) the local passenger trains operated on New England and the lines of Old Colony use the same terminal in Boston, many of the passenger train and engine crews and much of the passenger equipment operate in part over the lines of both Old Colony and New England,

(e) the schedules of such passenger service in Massachusetts over the lines of Old Colony and New England are so interrelated and the efficient use of crews and equipment so interwoven as between the several lines that the economies proposed on the lines of Old Colony may not fully be accomplished unless the proposed economies and reduction of operating losses in local passenger service are made effective on the lines of New England at the same time that the proposed economies and reductions are made effective on the lines of Old Colony,

[fol. 17] 3. The Trustees of the Principal Debtor further allege that

(a) annual savings in excess of $783,919 can be effected on the lines of Old Colony and of New England, including Old Colony's leased line, Boston and Providence Railroad, by operating said service substantially in accordance with the schedules hereinafter referred to, and additional annual savings in excess of $229,502 can be effected by other economies made possible by such operation and by abandonment of lines, applications for which are pending before the Interstate Commerce Commission, the total annual savings amounting to more than $1,013,421.

(b) the total amount of such annual savings which may be made on the lines of Old Colony are in excess of $658,899, on the Boston and Providence in excess of $220,139 and on the New England in excess of $134,383,

4. The Trustees further allege that at the hearing before this Court on Petition for Order No. 217 there was introduced, as Exhibit 12, a forecast of the cash which the Trustees of the Principal Debtor would have available each month up to and including December 31, 1938. Such forecast showed that as of October 31, their working capital would be reduced to $113,000 and at the end of the year would be $1,006,000. The forecast was based upon the cost of operating all service as presently operated, including the local passenger service on the lines of Old Colony and of New England, and unless there is a marked upturn in traffic and a substantial increase in net revenue, their working capital in the last quarter of 1938 will be inadequate.

5. The Trustees of the Principal Debtor further allege that they have not put into effect the schedules herein- [fol. 18] after recommended for the reason that when the hearings referred to in paragraph 6 of Petition for Order No. 289 began, it was anticipated that said hearings could be completed and action taken by the Department of Public Utilities prior to March 27, 1938, the effective date of the proposed timetables. When it became obvious that this could not be done, they agreed, at the request of the Department of Public Utilities, to operate passenger service on the existing schedules until the hearings had been completed and action taken. At the time of said agreement,

hey anticipated that the hearings would then be concluded nd necessary orders entered by said department not later han June 1, 1938.

6. The Trustees further allege that in view of the emer- ency created by the prospective shortage of working cap- tal and in the interest of preserving the assets of the states of Old Colony and of the Principal Debtor and heir ability adequately to serve the interests of the public he operating economies hereinbefore referred to should be resently put into effect.

Wherefore, your Trustees recommend that changes and odifications in the passenger service now rendered on the nes of Old Colony and of New England be made by oper- ting said service substantially in accordance with the chedules annexed hereto, marked Exhibit "A" and made part hereof, thereby discontinuing certain trains pres- ntly being operated, rearranging the times of the depart- re and arrival of other trains and improving the service y discontinuing the stops of all passenger trains at the tations set forth in the statement annexed hereto, marked Exhibit "B" and made a part hereof, and they pray that roper proof be taken with reference to the issues raised y said petition and this answer and recommendation and fols. 19-20] that the Court make such disposition of said ssues as shall be just and equitable.

Dated, June 27, 1938.

Howard S. Palmer, James Lee Loomis and Henry B. Sawyer, Trustees of the Property of the Principal Debtor and of Old Colony Railroad Company, Debtor, by Howard S. Palmer, and Henry B. Sawyer, Two of the Three Trustees.

EXHIBIT A—SHEET 1

Eastern Standard Time

BOSTON TO PROVIDENCE

Miles		★803 Ex. Sun.	★531 Sun.	★7 Ex. Sun.	★561 Sun. only	851 Ex. Sun.	★805 Ex. Sun.	★175 Daily	★553 Ex. Sun.	807 Sun. only	★11 Daily	★563 Sun. only	★515 Ex. Sun.	★13 Daily	★177 Daily	★809 Ex. Sun.	★23 Ex. Sun.	★565 Sun. only	★555 Ex. Sun.
		A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.
0 0	Boston South Sta. Lv	5 30	6 00	6 80	7 00	7 15	7 40	8 00	8 50	8 50	9 00	9 00	10 30	11 00	11 00	11 25	12 00	12 00	12 15
	Back Bay	5 34	6 08	6 34	7 08	7 19	7 44	8 05	8 55	8 54	9 05	9 58	10 34	11 05	11 05	11 29	⊕N'ON	12h04	12 19
15 0	Canton Junction	5q57				7 42				8 51		9 50	10 51			11 46	◆		
18 1	Sharon	6 04		6 20			8 08		8 50	8 57		10 06	11 07			11 52	YANKEE	12120	
24 9	Mansfield	6 14		6 29	7 08	7 39	8 16		8 59	9 07		10 16	11 09			12 02	CLIPPER	12129	
31 9	Attleboro			6 38	7 13	7 48			9 06			10 06	11 22				◆	12133	12 43
39 3	Pawtucket and C. F.			6 46	7 23	7 48			9 18			10 18	11 36				12 54	12144	12 55
43 8	Providence Due			6 55	7 32	7 55			9 25		9 56	10 25	11 45				3 01	12155	1 03
106 0	New London				8 47			10 32			11 11			1 16	1 16		2 04		2h45
156 8	New Haven				9 52			11 28			12 14			2 20	2 20		3 01		
	New York Penna. Sta. 125th St. O. C. T. Due				11 40			1 15			1h49 2 00			3h49 4 00	4 12		4h20 4 30		
229 1		A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	A.M.	A.M.	P.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

		853 Sat. only	★517 Sat. only	★13 Daily	★811 Sat. only	871 Ex. Sun.	★21 Daily	★523 Ex. Sun.	★183 Daily	567 Sun. only	★557 Ex. Sun.	★527 Ex. Sat. & Sun.	★27 Ex. Sat.	★531 Sat. only	★529 Ex. Sat & Sun.	★35 Sun only
		P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
Boston	South Sta. Lv	12h21	12h30	1 00	1h40	1 45	2 00	2 30	2h30	3 00	3120	3 10	3135	4h00	4h00	4105
	Back Bay	12h25	12h34	1 05	1h44	1 49	2 05	2 34	2h35	3 05	3123	3 33	3139	h4h04	4h04	4109
	Canton Junction	12s43				2 10							4100			
	Sharon		12s56				2s06				3140		4122			4140
	Mansfield		1s06				2s15				3146		4128			
	Attleboro		1s16								3158		4138			
	Pawtucket and C. F.		1s26								3208		4147			
	Providence Due		1s34				2 54		3A47		3215		4152			5105
	New London						4 11		5A06							6134
	New Haven						4 15		5A07							7138
	New York Penna. Sta. 125th St. O. C. T. Due						6s48 7 00		s7A39 7A50							s9109 9120
		P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

		★813 Ex. Sat. & Sun.	855 Ex. Sat. & Sun.	857 Ex. Sun.	★815 Ex. Sun.	★25 Sun only	★29 Daily	821 Sun only	★533 Ex. Sun.	★31 Sun only	★559 Ex. Sun.	★525 Sun only	★173 Daily	★537 Sun only	★539 Ex. Sun.	★179 Daily	★181 Ex. Sun.	★819 Daily	★1 Sat only	5 Ex. Sat.
		P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	A.M.	P.M.
Boston	South Sta. Lv	4h06	4h17	4 40	4 50	4153	5 30	5110	5 15	6h00	6 30	7h00	8 00	8h35	8 35	9 15	10 00	10 45	11h00	11h45
	Back Bay	4h10	4h18	4 44	4 54	4159	5 34	5114	5 18	6h05	6 33	7h04	8 05	8h39	8 39	9 40	10 05	10 49	11h04	11h50
	Canton Junction		4h37	5 05				5132				7h21		8h57	9 05			11 07		
	Sharon	4133			5 15			5137				7h24		9h02	9a08			11 12		
	Mansfield	4143			5 25			5146				7h37		9h11	9a18			11 22		
	Attleboro											7h46		9h21	9a28					
	Pawtucket and C. F.											7h55		9h31	9a38					
	Providence Due					5151						8h03		9h40	9a58					
	New London					7h08								10 31						
	New Haven					8h17								11 45						
	New York Penna. Sta. 125th St. O. C. T. Due					9153		10s04						9 00						
		P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	A.M.	P.M.

★ Regularly assigned cars AIR-CONDITIONED.
O Will not run Sept. 4.
◉ Will not run Sept. 5.
▲ Runs only on Sept. 5.
◆ Runs Monday, Sept. 5, instead of Sunday, Sept. 4.
‡ Daily except Saturdays.
† Daily except Saturdays and Sundays.
‖ Daily except Sundays.
§ Sundays only.
△ Has Parker Car.
□□ Has Dining Car.
△△ Has Meal Service.
a Due Mansfield 9 13 P.M., Attleboro 9 28 P.M., Pawtucket and C. F. 9 48 P.M.
b By connecting train Saturdays only.
f Stops to leave.
g Stops to take.
q Due Canton Jct. 5 88 A.M.
s Saturdays only.
s Due Attleboro 6 06 P.M., Pawtucket and C. F. 6 24 P.M.

◆ Extra Fare Train, limited in its equipment and will receive passengers only to the extent of its seating capacity. Special form of ticket required.

PROVIDENCE TO BOSTON

Miles from Providence		★2 Sat. only	4 Ex. Sat.	★500 Ex. Sun.	32 Sat. only	★172 Daily	852 Ex. Sun.	★504 Ex. Sun.	★178 Daily		854 Ex. Sun.	★506 Ex. Sun.
		P.M.	P.M.	A.M.	P.M.	A.M.	A.M.	A.M.	A.M.		A.M.	A.M.
	New York G. C. T. Lv 125th St. Penna. Sta.	11s30	11445	.....	11s45	12 45	.....	.....	1 55		.....	.....
	New Haven	1125	2100	.....	1150	2 50	.....	.....	3 48		.....	.....
	New London	2140	3115	.....	3107	4 00	.....	.....	4 58		.....	.....
0 0	Providence Lv	4105	4148	4 50	5100	5 40	.....	6 08	6 25		.....	6 50
4 5	Pawtucket and C. F.			5 05	5112		.....	6 18			.....	6 59
11 9	Attleboro			5 28	5127		.....	6 30			.....	7 08
18 9	Mansfield			5 33	5138		.....	6 40			.....	7 17
25 7	Sharon			5 44	5152		.....	6 50			.....	7 26
28 8	Canton Junction			5 50	5158		6 48					
	Boston Back Bay	5110	5145	6 10	6120	6 40	7 08	7 11	7 20		7A26	7 43
43 8	South Sta. Due	5115	5150	6 15	6125	6 45	7 13	7 16	7 25		7A31	7 48
		A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.		A.M.	A.M.

		★812 Daily	★8 Daily	868 Ex. Sun.	★516 Ex. Sun.	★10 Daily	★564 Sun. only	★554 Ex. Sun.	★814 Ex. Sun.	★14 Daily	★22 Ex. Sun.
		A.M.	A.M.	P.M.	P.M.	A.M.	P.M.	P.M.	P.M.	A.M.	P.M.
	New York G. C. T. Lv 125th St. Penna. Sta.	.....	7 30	.....	.....	9 00	.....	.....	.....	11 00	.....
		.....	7h41	.....	.....	9h10	.....	.....	.....	11h10	.....
	New Haven	.....	9 15	.....	.....	10 48	.....	.....	.....	12 40	1 27
	New London	.....	10 22	.....	.....	11 50	.....	.....	.....	1 44	2 24
	Providence Lv	.....	11 43	.....	12 40	1 03	2100	2 10	.....	3 03	3 33
	Pawtucket and C. F.	.....	△△	.....	12 50	△△	2107	2 17	.....	△△	□□
	Attleboro	.....		.....	1 09	□□	2117	2 27	.....	□□	
	Mansfield	11 39			1 20		2125		12		
	Sharon	11 48			1 31		2135		22		
	Canton Junction	11 53		12 28	1 36				27		
	Boston Back Bay	12 10	12 35	12 30	1 43	1 53	2152	3 17	3 44	3 55	4 43
	South Sta. Due	12 15	12 40	12 35	1 48	2 00	2155	3 18	3 50	4 00	4 48
		P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

		★20 Daily	‖	★24 Ex. Sun.	★26 Ex. Sat.	★178 Daily	★558 Ex. Sun.		★30 Fri. only	★28 Daily
		P.M.	P.M.	P.M.	P.M.	P.M.	P.M.		P.M.	P.M.
	New York G. C. T. Lv 125th St. Penna. Sta.	2 00 dd	2▼55	3 00	4400	4 00	.....		4▼45	4950
	New Haven	3 40	4▼35	4 40	5427	5 44	.....		5▼25	6920
	New London	4 44	5▼30	5 47		6 44	.....		6▼25	7933
	Providence Lv	6 03	6▼50	7 08	7433	8 03	.....		8▼45	8950
	Pawtucket and C. F.	△△		△△	□□	△△	.....			△△
	Attleboro	□□		□□			.....			□□
	Mansfield						.....			
	Sharon						.....			
	Canton Junction						.....			
	Boston Back Bay	6 53	7▼45	8 00	‡8428	8 53	.....		9▼35	9945
	South Sta. Due	7 00	7▼50	8 05	8430	9 00	.....		9▼40	9950
		P.M.	P.M.	P.M.	P.M.	P.M.	P.M.		P.M.	P.M.

★ Regularly assigned cars AIR-CONDITIONED.
O Will not run Sept. 4.
◉ Will not run Sept. 5.
◆ Runs only on Sept. 5.
▲ Runs only on Sept. 2.
% Also runs Sept. 5.
‡ Daily except Sundays.
† Daily except Saturdays.
‖ Sundays only.
◆ Fridays only.
△ Has Parker Car.
□□ Has Dining Car.
●● Has Grill Car, Mondays only except Sept. 5. Has Dining Car, Sept. 6 only.
△△ Has Meal Service.

◆ Extra Fare Train, limited in its equipment and will receive passengers only to the extent of its se

PROVIDENCE TO BOSTON

Miles from Providence		★2 Sat. only	4 Ex. Sat.	★500 Ex. Sun.	32 Sat. only	★172 Daily	852 Ex. Sun.	★504 Ex. Sun.	★178 Daily		854 Ex. Sun.	★506 Ex. Sun.	★550 Ex. Sun.	★560 Sun. only	★508 Ex. Sun.	808 Sun. only	810 Ex. Sun.	★510 Daily	★552 Ex. Sun.	★562 Sun only
		P.M.	P.M.	A.M.	P.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.
	New York O. C. T. Lv 125th St. Penna Sta.	11♦30	11♦45		11♦45															
	New Haven	1♦25	2♦00		1♦50	12 45			1 55											
	New London	2♦40	3♦15		3♦07	2 50			3 48											
0 0	Providence Lv	4♦05	4♦48	4 50	5♦00	4 00			4 58						8n45					
4 5	Pawtucket and C. F.			5 05	5♦19	5 40		6 08	6 25			6 50	7 30	8♦00	8 00		9 15	10 00	11♦00	
11 9	Attleboro			5 23	5♦27			6 18				6 59	7 37	8♦07	8 09		9 23	10 07	11♦07	
18 9	Mansfield			5♦33	5♦38			6 30				7 08		8♦17	8 20		9 33	10 17	11♦17	
25 7	Sharon			5 44	5♦52			6 40				7 17		8♦26	8 29		9 42	10 26	11♦26	
28 8	Canton Junction			5 50	5♦58			6 50				7 26		8♦35	8 39		9 52	10 35	11♦35	
															8 44	8♦58	9 58			
45 6	**Boston** Back Bay	5♦10	5♦45	6 10	6♦20	6 40	7 08	7 11	7 20		7 43	7 47	8 11	8♦59	9 00	9♦10	9 27	10 15	10 52	11♦52
	South Sta. Due	5♦15	5♦50	6 15	6♦25	6 45	7 13	7 16	7 25		7 48	7 52	8 14	8♦65	9 05	9♦15	9 32	10 20	10 55	11♦55
		A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.

Miles from Providence		★812 Daily	★8 Daily	868 Ex. Sun.	★516 Ex. Sun.	★10 Daily	★564 Sun. only	★534 Ex. Sun	★814 Ex. Sun.	★14 Daily		★22 ♦Ex. Sun.	★518 Sun. only	★34 Sat. only	★174 Daily	★556 Daily	★818 Ex. Sun.	★816 Sun. only	
		A.M.	A.M.	P.M.	P.M.	A.M.	P.M.	P.M.	P.M.	A.M.		⊕N'ON	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
	New York O. C. T. Lv 125th St. Penna Sta.		7 30			9 00				11 00		12 00		12♦02					
			7♭41			9♭10				11♭10					12 20				
	New Haven			9.15		8♦56									1♦37				
	New London			10 22		10 48				12 40					2♦55				
	Providence Lv		11 43		12 40	11 50				1 44					4♦18				
	Pawtucket and C. F.				12 49	1 03				3 03									
	Attleboro				12 59														
	Mansfield		11 39		1 09														
	Sharon		11 48		1 22														
	Canton Junction		11 53	12 28	1 26														
	Boston Back Bay		12 10	12 35	1 43	1 55													
	South Sta. Due		12 15	12 40	1 48	2 00													
			P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.		P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

Miles from Providence		★20 Daily	‡‡	★24 Ex. Sun.	★26 Ex. Sat.	★176 Daily	★538 Ex. Sun.		★30 Fri. only	★28 Daily	★524 Daily	850 Ex. Sun.							
		P.M.	P.M.	P.M.	⊙P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.							
	NewYork C. C. T. Lv 125th St. Penna. Sta.	2 00 dd	2▼55	3 00	4400			4▼45	4♦50	5 00									
	New Haven	3 40	4▼35	4 40				6▼25	6♦28	6 40									
	New London	4 44	5▼30	5 47	5427	4 00		7▼25	7♦33	7 45									
	Providence	6 03	6▼50	7 08	7433	5 44		8▼45	8♦50	9 08									
	Pawtucket and C. F.					6 03	30												
	Attleboro					6 17													
	Mansfield																		
	Sharon																		
	Canton Junction																		
	Boston Back Bay	6 55	7▼45	8 00		6 55	9 22	9▼35	9♦45	10 00									
	South Sta. Due	7 00	7▼50	8 05		7 00	9 27	9▼40	9♦50	10 05									
		P.M.	P.M.	P.M.		P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.							

★ Regularly assigned cars AIR-CONDITIONED.
○ Will not run Sept. 4.
◐ Will not run Sept. 5.
◆ Runs only on Sept. 5.
▼ Runs only on Sept. 2.
% Also runs Sept. 5.
† Daily except Sundays.
‡ Daily except Saturdays.
‖ Sundays only.
§ Fridays only.
‡‡ Has Parlor Car.
□□ Has Dining Car.
●● Has Grill Car. Mondays only except Sept. 5. Has Dining Car, Sept. 6 only.
△△ Has Mail Service.

♦ Extra Fare Train, limited in its equipment and will receive passengers only to the extent of its seating capacity. Special form of ticket required

b By connecting train Saturdays only.
f Stops to leave.
t Stops to take.
q Due Canton Jct. 5 52 A.M.
s Saturdays only.
x Due Attleboro 6 06 P.M., Pawtucket and C. F. 6 24 P.M.
n No connection Sept. 5.
v No baggage checked to (or from) this station on this train.
dd Stops Sundays only "to take" at 125th St. 2 10 P.M.

Eastern Standard Time

BOSTON TO BLACKSTONE

Miles		★133 Sun. only	★131 Ex. Sun.	917 Sat. only	921 Ex. Sun	925 Ex. Sat. & Sun.	★137 Ex. Sun.	★135 Sun. only	927 Ex. Sat.
		A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
0.0	Boston South Station Lv.	8 15	8 15	12 24	3 10	4 30	5 05	5 20	8 45
	Boston Back Bay	8 19	8 19	12 28	3 14	4 34	5 09	5 24	8 49
9.6	Readville			12 43	3 30				
11.0	Endicott			12 48	3 34	4 50	5 25		9 06
12.6	Islington			12 53	3 37	4 55			9 11
14.4	Norwood			12 58	3 43	5 00			9 16
15.0	Norwood Central	8 37	8 36	12 56	3 43	4 59	5 31	5 42	9 17
19.5	Walpole	8 44	8 44	1 03	3 51	5 06	5 38	7 5 49	9 24
22.2	Norfolk, Mass		8 50	1 09	3 57	5 12	5 44		9 30
27.6	Franklin	8 55	8 58	1 19	4 04	5 19	5 50	6 00	9 37
36.6	Blackstone Due	9 07	9 10	1 27	4 15	5 30	6 03	6 12	9 48
61.4	Putnam	9 40	9 46				6 38	6 45	
85.9	Willimantic	10 16	10 25				7 19	7 21	
117.6	Hartford Due	11 05	11 15				8 13	8 10	
148.5	Waterbury, Conn. Due	12 00	12 25				9 15	9 05	
		N'ON	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

BLACKSTONE TO BOSTON

Miles from Hartford		910 Ex. Sun.	918 Ex. Sun.	920 Ex. Sun	★130 Ex. Sun.	★132 Sun. only	★136 Ex. Sun.	★134 Sun only
		A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.
	Waterbury, Conn. Lv.				7 e10	7 50	3 45	4 25
0.0	Hartford Lv.				8 15	8 15	5 10	5 20
31.6	Willimantic				9 05	9 03	6 01	6 10
56.1	Putnam				9 49	9 42	6 41	6 47
80.9	Blackstone Lv.	5 41	6 02	6 50	10 22	10 18	7 16	7 18
89.9	Franklin	5 57	6 14	6 42	10 34	10 25	7 28	7 30
94.8	Norfolk, Mass	6 05	6 20	6 48	10 40			
98.2	Walpole	6 09	6 26	6 54	10 46	f10 36	7 40	7 40
103.8	Norwood Central	6 16	6 33	7 01	10 53	10 43	7 47	7 47
103.1	Norwood, Mass	6 18	6 35	7 03				
104.9	Islington	6 22	6 39					
106.5	Endicott	6 25	6 42	7 08				
107.9	Readville Due		6 46					
117.9	Boston Back Bay Due	6 48	7 02	7 28	11 12	11 00	8 05	8 05
	Boston South Station Due	6 48	7 07	7 28	11 17	11 05	8 10	8 10
		A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.

★ Regularly assigned cars AIR-CONDITIONED.

d Daily except Saturdays.

‡ Daily except Saturdays and Sundays

§ Sundays only.

e By connecting train.

f Stops on signal.

s Saturdays only.

BOSTON TO DEDHAM—NEEDHAM

Miles		929 Ex. Sun.	923 Sat only	949 Ex. Sat. & Sun.	905 Sat. only	937 Sat. only	269 Sat. only	973 Ex. Sun.	917 Ex. Sat. & Sun.	951 Ex. Sun.	977 Ex. Sat. & Sun.	939 Ex. Sat. & Sun.	953 Ex. Sun.	979 Ex. Sat. & Sun.	941 Ex. Sun.	955 Ex. Sun.
		A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
0.0	Boston South Station Lv.	7 25	11 20	11 35	11 40	12 18	2 40	2 50	3 15	3 45	4 00	4 20	4 28	4 45	5 10	5 40
	Boston Back Bay	7 29	11 24	11 39	11 44	12 22	2 44	2 54	3 19	3 49	4 04	4 24	4 32	4 49	5 14	5 44
6.4	Roslindale	7 40	11 35	11 50	11 55	12 33	2 55	3 05	3 30	4 00	4 15		4 43	5 00	5 25	5 55
7.2	Bellevue		11 37	11 52	11 57	12 35	2 57	3 08	3 32	4 02	4 17		4 45	5 02	5 27	5 57
7.7	Highland		11 39	11 54	11 59	12 37	2 59	3 10	3 34	4 04	4 19		4 47	5 04	5 29	5 59
8.1	West Roxbury Due	7 44	11 41	11 56	12 01	12 40	3 01	3 13	3 36	4 06	4 21	4 40	4 49	5 06	5 31	6 01
10.5	Dedham				12 05		3 05	3 18			4 25		4 53	5 11		
10.9	Stone Haven				12 08		3 08	3 20			4 28		4 56	5 14		
11.8	East Dedham Due				12 10		3 10	3 22			4 30		4 58	5 16		
11.0	Bird's Hill	7 51	11 47	12 02		12 46			3 42	4 12		4 44			5 38	6 07
12.1	Needham Junction	7 55	11 50	12 05		12 49			3 45	4 15		4 47			5 41	6 10
12.8	Needham	7 58	11 53	12 08		12 52			3 48	4 18		4 50			5 44	6 13
.7	Needham Heights Due	8 01	11 56	12 11		12 55			3 51	4 21		4 54			5 48	6 16
		A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

NEEDHAM—DEDHAM TO BOSTON

Miles	Miles		926 Ex. Sun.	954 Ex. Sun.	914 Ex. Sun.	928 Sat. only	970 Ex. Sun.	938 Ex. Sun.	958 Ex. Sun	940 Ex. Sun.	944 Ex. Sat. & Sun.	960 Ex. Sun.
			A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.
0.0	....	Needham Heights Lv.	6 39	....	6 44	6 50	....	7 18	....	8 09	12 25	6 28
0.9	....	Needham	6 42	....	6 47	7 02	....	7 16	....	8 12	12 28	6 31
1.6	....	Needham Jct.	6 09	....	6 50	7 06	....	7 20	....	8 16	12 32	6 35
2.7	....	Bird's Hill	6 09	....	6 53	7 09	....	7 23	....	8 19	12 35	6 38
....	0.0	East Dedham Lv.	....	6 40	....	....	7 10	....	7 55	....	....	....
....	0.4	Stone Haven	....	6 42	....	....	7 12	....	7 57	....	....	....
....	0.8	Dedham	....	6 44	....	....	7 14	....	7 59	....	....	....
0.0	3.3	West Roxbury Lv.	6 14	6 49	6 50	7 14	7 10	7 39	7 54	8 34	12 40	6 41
0.0	2.9	Highland	6 16	6 51	7 01	7 16	7 21	7 40	7 56	8 36	12 42	6 43
0.0	4.1	Bellevue	6 18	6 53	7 03	7 18	7 23	7 42	7 58	8 38	12 44	6 45

Miles			★133 Sun. only	★131 Ex. Sun.	917 Sat. only	921 Ex. Sun.	925 Ex. Sat. & Sun.	★137 Ex. Sun.	★135 Sun. only	927 Ex. Sat.
			A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
0.0	**Boston** South Station	Lv.	8 15	8 15	2 24	3 10	4 30	5 03	5 20	5 45
....	**Boston** Back Bay		8 19	8 19	2 28	3 14	4 34	5 08	5 24	5 49
9.6	Readville		....	....	2 43	3 30	....	....	....	....
11.0	Endicott		....	....	2 47	3 33	4 50	5 25	....	6 05
12.6	Islington		....	....	2 50	3 37	4 53	....	....	6 11
14.4	Norwood		....	....	2 54	3 41	4 57	....	....	6 15
15.0	Norwood Central		8 37	8 36	2 56	3 43	4 59	5 31	5 42	6 17
19.8	Walpole		8 44	8 44	3 03	3 51	5 06	5 38	5 48	6 24
22.2	Norfolk, Mass		....	8 50	3 08	3 57	5 12	5 44	....	6 30
27.6	Franklin		8 55	8 58	3 18	4 04	5 22	5 50	6 00	6 37
28.6	Blackstone	Due	9 07	9 10	3 27	4 13	5 30	6 01	6 12	6 48
61.4	Putnam		9 40	9 45	....	....	....	6 38	6 45	....
69.9	Willimantic		10 18	10 25	....	....	....	7 15	7 21	....
117.6	Hartford	Due	11 05	11 15	....	....	....	8 15	8 10	....
149.5	Waterbury, Conn.	Due	12 00	12 25	....	....	....	9 15	9 05	....
			P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

BLACKSTONE TO BOSTON

Miles from Hartford			916 Ex. Sun.	918 Ex. Sun.	920 Ex. Sun.	★120 Ex. Sun.	★132 Sun. only	★136 Ex. Sun.	★134 Sun. only
			A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.
	Waterbury, Conn.	Lv.	....	....	....	7 10	7 30	3 45	4 25
0.0	Hartford	Lv.	....	....	....	8 15	8 15	5 10	5 50
31.9	Willimantic		....	....	....	9 05	9 08	6 01	6 40
68.1	Putnam		....	....	....	9 40	9 42	6 41	7 19
80.6	Blackstone	Lv.	5 45	6 05	6 50	10 22	10 18	7 18	7 58
89.9	Franklin		5 57	6 14	6 42	10 34	10 30	7 29	8 10
94.8	Norfolk, Mass		6 03	6 20	6 48	10 40	....	....	....
98.2	Walpole		6 09	6 26	6 54	10 46	f10 36	7 40	7 40
103.8	Norwood Central		6 16	6 33	7 01	10 53	10 43	7 47	7 47
103.1	Norwood, Mass		6 18	6 35	7 03	....	....	....	....
104.9	Islington		6 23	6 39	....	....	....	....	....
106.6	Endicott		6 26	6 42	7 08	....	....	....	....
107.9	Readville	Due	....	6 46	....	....	....	....	....
	Boston Back Bay		6 48	7 02	7 28	11 19	11 00	8 02	8 05
117.6	**Boston** South Station	Due	6 48	7 07	7 28	11 17	11 00	8 10	8 10
			A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.

★ Regularly assigned cars AIR-CONDITIONED.

‡ Daily except Saturdays.

‡ Daily except Saturdays and Sundays

‖ Sundays only.

c By connecting train.

f Stops on signal.

s Saturdays only.

BOSTON TO DEDHAM—NEEDHAM

Miles			929 Ex. Sun.	923 Sat. only	949 Ex. Sat. & Sun.	965 Sat. only	957 Sat. only	969 Sat. only	973 Ex. Sun.	937 Ex. Sat. & Sun.	951 Ex. Sun.	977 Ex. Sat. & Sun.	939 Ex. Sat. & Sun.	953 Ex. Sun.	979 Ex. Sat. & Sun.	941 Ex. Sun.	955 Ex. Sun.
			A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
0.0	**Boston** South Station	Lv.	7 35	11 20	11 35	11 40	12 18	2 40	2 50	3 13	3 45	4 00	4 20	4 28	4 43	5 10	5 40
....	**Boston** Back Bay		7 39	11 24	11 39	11 44	12 22	2 44	2 54	3 17	3 49	4 04	4 24	4 32	4 47	5 14	5 44
6.4	Readdale		7 40	11 35	11 50	11 55	12 33	2 55	3 05	3 28	4 00	4 15	....	4 43	4 58	5 25	5 55
7.2	Bellevue		....	11 37	11 52	11 57	12 35	2 57	3 07	3 30	4 02	4 17	....	4 45	5 00	5 27	5 57
7.7	Highland		....	11 39	11 54	11 59	12 37	2 59	3 09	3 32	4 04	4 19	....	4 47	5 02	5 29	5 59
8.1	West Roxbury	Due	7 44	11 41	11 56	12 01	12 40	3 01	3 11	3 34	4 06	4 21	4 36	4 49	5 04	5 31	6 01
10.6	Dedham		....	....	....	12 04	....	3 04	....	....	....	....	4 40	....	4 55	....	....
10.9	Stone Haven		....	....	....	12 06	....	3 06	....	....	....	....	4 42	....	4 57	....	....
11.8	East Dedham	Due	....	....	....	12 10	....	3 10	....	....	....	....	4 46	....	5 01	....	....
11.0	Bird's Hill		7 51	11 47	12 02	....	12 48	....	3 19	3 42	4 14	....	4 44	....	5 09	5 39	6 07
13.1	Needham Junction		7 55	11 50	12 06	....	12 52	....	....	3 45	4 18	....	4 48	....	5 12	5 42	6 10
13.5	Needham		7 58	11 53	12 09	....	12 54	....	....	3 48	4 20	....	4 51	....	5 15	5 45	6 13
.7	Needham Heights	Due	8 01	11 56	12 11	....	12 56	....	....	3 51	4 21	....	4 54	....	5 18	5 48	6 16
			A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

NEEDHAM—DEDHAM TO BOSTON

Miles	Miles		920 Ex. Sun.	934 Ex. Sun.	914 Ex. Sun.	928 Ex. Sun.	970 Ex. Sun.	938 Ex. Sun.	958 Ex. Sun.	940 Ex. Sun.	944 Ex. Sat. & Sun.	980 Ex. Sun.
			A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.
0.0	....	Needham Heights Lv.	6 56	....	6 44	6 50	....	7 18	....	8 06	12 25	3 26
0.9	....	Needham	6 58	....	6 47	7 03	....	7 16	....	8 13	12 28	3 43
1.9	....	Needham Jct.	6 06	....	6 50	7 06	....	7 20	....	8 16	12 31	3 46
2.7	....	Bird's Hill	6 09	....	6 53	7 09	....	7 23	....	8 19	12 34	3 49
....	0.0	East Dedham Lv.	....	6 40	....	....	7 10	....	7 55	....	....	....
....	0.4	Stone Haven	....	6 42	....	....	7 12	....	7 57	....	....	....
....	0.8	Dedham	....	6 44	....	....	7 14	....	7 59	....	....	....
5.6	5.8	West Roxbury Lv.	6 14	6 48	6 55	7 14	7 19	7 38	8 04	8 24	12 40	3 41
6.0	6.0	Highland	6 16	6 51	7 01	7 16	7 21	....	8 06	8 26	12 42	3 43
6.5	6.1	Bellevue	6 18	6 53	7 03	7 18	7 23	....	8 08	8 28	12 44	3 45
7.3	6.9	Readdale	6 20	6 55	7 05	7 20	7 25	....	8 10	8 30	12 46	3 47
....	....	**Boston** Back Bay Due	6 30	7 05	7 15	7 30	7 35	7 40	8 20	8 40	12 56	3 57
10.7	11.0	**Boston** South Station Due	6 36	7 10	7 20	7 36	7 40	7 48	8 26	8 46	1 00	10 02
			A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.

‡ Daily except Saturdays and Sundays.

s Saturdays only.

Eastern Standard Time

BOSTON AND NEW BEDFORD—FALL RIVER

Miles		★803 889 Ex. Sun.	★805 Ex. Sun.	Bus Ex. Sun.	★807 Sun. only	★809 ★891 Ex. Sun.	Bus Ex. Sun.	★811 Sat. only	Bus Sat. only	★813 ★897 Ex. Sat. & Sun.	★815 ★899 Ex. Sun.	Bus Ex. Sun.	★821 ★885 Sun. only	★819 Daily
		A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
0.0	Boston South Station Lv.	5 30	7 40	7 40	8 30	11 25	11 c25	1 40	c1 40	4 05	4 50	4 c50	3 10	10 45
...	Back Bay	5 34	7 44	7 44	8 34	11 29	11 c29	1 44	c1 44	4 10	4 54	4 c54	3 14	10 49
16.0	Canton Jct.	5 57	...	...	8 51	11 46	11 c46	...	...	...	...	...	3 32	11 07
16.1	Sharon	6 04	8 06	8 06	8 57	11 52	11 c52	2 06	c2 06	4 33	5 16	5 c16	3 37	11 12
24.9	Mansfield	6 15	8 17	8 17	9 07	12 03	12 c03	2 15	c2 15	4 44	5 26	5 c26	3 47	11 22
26.8	Taunton Due	6 25	8 28	8 c28	9 24	12 20	12 c20	2 32	c2 32	5 03	5 43	5 c43	4 04	11 41
26.8	Taunton Lv.	6 26	8 28	...	9 24	12 20	...	2 32	...	5 03	5 43	...	4 04	11 41
42.0	Myricks Due	6 45	...	...	...	12 39	...	2 42	...	5 13	bb	...	4 14	...
42.0	Myricks Lv.	6 48	...	...	...	12 45	...	2 45	...	5 18	bb	...	4 19	...
56.0	New Bedford Due	7 07	9 08	...	9 50	1 00	...	3 03	...	5 37	6 11	...	4 33	12 07
56.8	New Bedford Wharf Due	7 20	...	...	...	1 00	...	...	...	...	6 20	...	4 45	12 20
...	Taunton Lv.	...	...	8 34	...	...	12 21	...	2 33	...	...	5 44	3 35	...
...	North Dighton Due	...	...	8 45	...	...	12 32	...	2 44	...	...	5 55	3 46	...
...	Segregansett	...	...	8 49	...	...	12 36	...	2 47	...	...	5 59	3 50	...
...	Dighton	...	...	8 51	...	...	12 38	...	2 50	...	...	6 01	...	...
...	Somerset	...	...	8 58	...	...	12 45	...	2 57	...	...	6 08	...	...
42.0	Myricks Lv.	6 58	...	...	...	12 37	...	...	...	5123	bb	...	6121	...
55.2	Fall River Due	7 08	...	9 14	...	12 52	1 01	...	3c13	5138	bb	6 24	6136	...
		A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	A.M.

FALL RIVER—NEW BEDFORD AND BOSTON

Miles	Miles		★802 ★804 Ex. Sun.	★806 Ex. Sun.	Bus Ex. Sun.	★808 ★890 Sun. only	894 ★810 Ex. Sun.	Bus Ex. Sun.	★812 Daily	★814 Ex. Sun.	Bus Sat. only	Bus Ex. Sat. & Sun.	Bus Ex. Sun.	Bus Sat. only	★898 ★816 Ex. Sun.	★888 ★816 Sun. only	★820 Sun. only
			A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
0.0	...	Fall River Lv.	6 02	...	7 07	7 50	8 07	10 56	...	...	1 c50	2110	4 53	4 55	5120	...	...
10.7	...	Myricks Due	6 17	...	...	8 06	8 22	...	...	...	...	...	...	5 10	5135	...	...
...	...	Somerset	...	...	7 25	...	...	10 55	...	...	c2 06	c2 26	c5 06	...	...	...	...
...	...	Dighton	...	...	7 30	...	...	11 02	...	...	c2 13	c2 33	c5 13	...	...	...	...
...	...	Segregansett	...	...	7 33	...	...	11 05	...	...	c2 16	c2 36	c5 16	...	...	...	...
...	...	North Dighton	...	...	7 36	...	...	11 08	...	...	c2 19	c2 39	c5 19	...	...	...	...
18.9	...	Taunton Due	...	...	7 47	...	...	11 19	...	...	2 30	2150	5 30	...	...	...	...
...	0.0	New Bedford Wharf Lv.	...	...	...	7 40	...	...	10 45	...	...	...	...	4 33	5120	...	8135
...	0.8	New Bedford	6 09	7 25	...	7 50	8 07	...	10 55	2 25	...	...	...	4 43	5130	...	8150
...	14.8	Myricks Due	6 20	...	...	8 08	8 25	...	...	...	...	...	...	5 13	5138	...	...
...	14.8	Myricks Lv.	6 27	...	...	8 18	8 32	...	...	...	...	...	...	5 20	5145	...	...
...	21.0	Taunton Due	6 37	7 51	...	8 25	8 48	...	11 29	2 54	...	...	...	5 30	5157	...	9120
...	21.0	Taunton Lv.	6 41	7 51	7 51	8 25	8 48	11 c23	11 23	2 54	c2 54	c2 54	c5 38	5 38	5157	...	9120
...	31.9	Mansfield	...	...	...	...	8 59	11 c39	11 39	3 12	c3 12	c3 12	c5 55	5 56	6114	...	...
...	36.7	Sharon	...	...	...	...	...	11 c48	11 48	3 22	c3 22	c3 22	c6 07	6 07	6123	...	...
...	41.8	Canton Jct.	...	...	...	8 58	...	11 c53	11 53	3 28	c3 28	c3 28	c6 13	6 13	6128	...	...
33.7	56.8	Boston Back Bay	7 26	8 36	8 c36	9 10	9 27	12 c10	12 10	3 45	c3 45	c3 45	c6 32	6 32	6143	...	10104
		Due South Sta.	7 31	8 40	8 c40	9 15	9 32	12 c15	12 15	3 50	c3 50	c3 50	c6 37	6 37	6150	...	10110
			A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

★ Regularly assigned cars AIR-CONDITIONED.
‡ Daily except Saturdays and Sundays.
§ Sundays only.

c By connecting train.
s Saturdays only.
bb Stops Saturdays at Myricks, due 5 52 P.M., leave Myricks 5 58 P.M., due Fall River 6 13 P.M.

BOSTON TO NORTH EASTON

Miles		863 Ex. Sun.	851 Ex. Sun.	865 Ex. Sun.	867 Ex. Sun.	853 Sat. only	917 Daily	871 Ex. Sun.	881 Ex. Sun.	921 Ex. Sun.	927 Ex. Sat. & Sun.	873 Ex. Sat. & Sun.	875 Sat. only	855 Ex. Sat. & Sun.	857 Ex. Sun.	877 Ex. Sun.	879 Ex. Sun.	927 Ex. Sat.	881 Ex. Sun.		
		A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.		
0.0	Boston South Station Lv.	5 c30	7 15	10 c30	11 c35	12 21	12 24	1 45	2 30	3 10	3 13	c3 13	c4 00	4 11	4 40	5 c18	6 c35	6 43	10 45	...	...
...	Back Bay	5 c34	7 19	10 c34	11 c39	12 25	12 28	1 49	2 34	3 14	3 17	c3 17	c4 04	4 15	4 44	5 c18	6 c39	6 47	10 49	...	...
6.4	Hyde Park	...	7 30	...	...	...	12 39	2 00	...	3 25	...	...	...	4 26	4 55	...	...	9 00	...	...	...
9.6	Readville	...	7 34	...	...	...	12 42	...	...	3 28	...	c3 42	...	4 30	4 59	...	...	...	...	...	...
16.0	Canton Jct. Due	6 c38	7 42	10 c51	11 c46	12 43	...	2 10	2 c52	...	3 38	c3 52	c4 20	4 39	5 05	5 c37	6 c58	...	11 07	...	...
16.0	Canton Jct. Lv	6 08	7 43	10 55	11 50	12 44	...	2 11	2 53	...	3 39	4 02	4 23	4 39	5 08	5 38	7 00	...	11 10	...	...
18.6	Canton, Mass.	6 08	7 45	10 57	11 52	12 46	...	2 13	2 55	...	3 41	4 04	4 25	4 40	5 08	5 40	7 02	...	11 12	...	...
18.9	Stoughton	6 15	7 51	11 08	11 58	12 52	...	2 19	3 01	...	3 47	4 10	4 31	4 46	5 14	5 46	7 08	...	11 18	...	...
23.7	North Easton Due	6 28	7 58	11 10	12 05	12 58	...	2 26	3 06	...	3 52	4 17	4 36	4 51	5 21	5 53	7 15	...	11 25	...	...
		A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.		

NORTH EASTON TO BOSTON

Miles		500 Ex. Sun.	860 Ex. Sun.	916 Ex. Sun.	918 Ex. Sun.	852 Ex. Sun.	854 Ex. Sun.	862 Ex. Sun.	884 Ex. Sun.	866 Ex. Sun.	868 Ex. Sun.	870 Ex. Sun.	872 Ex. Sun.	876 Ex. Sun.	878 Ex. Sun.	830 Ex. Sun.					
		A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.					
0.0	North Easton Lv.	...	5 50	...	...	6 35	7 25	8 36	9 40	11 30	12 13	2 10	3 12	3 53	5 31	11 30	...	...	...	...	...
5.8	Stoughton	...	5 57	...	...	6 39	7 14	8 38	9 47	11 37	12 18	2 17	3 19	4 02	5 38	11 38	...	...	...	...	...
7.1	Canton, Mass.	...	5 48	...	...	6 45	7 20	8 39	9 58	11 43	12 23	2 40	3 25	4 08	10 04	11 44	...	...	...	...	...
7.7	Canton Jct. Due	...	5 48	...	...	6 47	7 22	8 41	9 56	11 45	12 27	2 42	3 27	4 10	10 06	11 46	...	...	...	...	...
7.7	Canton Jct. Lv.	...	5 c50	...	...	6 48	7 23	8 c44	9 c56	11 c53	12 28	...	3 c28	4 c15	10 c09	11 46	...	...	...	...	...
10.1	Readville	5 57	5 c57	...	6 47	...	...	...	...	...	12 31	...	...	...	...	...	...	...	...	...	...
14.8	Hyde Park	...	6 c10	6 28	6 51	...	7 28	...	...	...	12 36	...	...	...	...	...	...	...	...	...	...

BOSTON AND NEW BEDFORD—FALL RIVER

Miles			★803 889 Ex. Sun.	★805 Ex. Sun.	Bus Ex. Sun.	★807 Sun. only	★809 ★891 Ex. Sun.	Bus Ex. Sun.	★811 Sat. only	Bus Sat. only	★813 ★897 Ex. Sat. & Sun.	★815 ★899 Ex. Sun.	Bus Ex. Sun.	★821 ★885 Sun. only	★819 Daily	
			A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	
0.0	Boston South Station Lv.		5 50	7 40	7 e40	8 e30	11 25	11 e25	1 e40	e1 e40	4 10	4 50	4 e50	3 10	10 45	
	Back Bay		5 54	7 44	7 e44	8 e34	11 29	11 e29	1 e44	e1 e44	4 14	4 54	4 e54	3 14	10 48	
10.0	Canton Jct.		6 07			8 51	11 46	11 e46						3 32	11 07	
18.1	Sharon		6 04	8 08	8 e06	8 57	11 52	11 e52	2 e06	e2 e06	4 33	5 16	5 e16	3 37	11 12	
24.9	Mansfield		6 15	8 17	8 e17	9 07	12 03	12 e03	2 e15	e2 e15	4 42	5 26	5 e26	3 47	11 22	
35.8	Taunton Due		6 35	8 35	8 e35	9 e24	12 20	12 e20	2 e32	e2 e32	5 03	5 43	5 e43	4 04	11 41	
35.8	Taunton Lv.		6 35	8 35		9 e24	12 20		2 e32		5 03	5 43		4 04	11 41	
49.0	Myricks Due		6 46				12 31		2 e42		5 13	bb		4 14		
49.0	Myricks Lv.		6 46				12 32		2 e43		5 18	bb		4 19		
56.0	New Bedford Due		7 07	9 05		9 e50	12 50		3 e03		5 37	6 11		4 33	12 07	
56.8	New Bedford Wharf Due		7 20				1 00					6 20		4 43	12 20	
	Taunton Lv.				8 34			12 21		2 33			5 44			
	North Dighton Due				8 45			12 42		2 44			5 55			
	Segreganset				8 48			12 45		2 47			5 58			
	Dighton				8 51			12 48		2 50			6 01			
	Somerset				8 58			12 55		2 57			6 08			
49.0	Myricks Lv.		6 55				12 37				5 23	bb		4 21		
59.7	Fall River Due		7 05		9 14		12 52	1 01		3 e13	5 38	bb	6 24	4 36	12 07	
			A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	A.M.	

FALL RIVER—NEW BEDFORD AND BOSTON

Miles	Miles		★802 ★804 Ex. Sun.	★806 Ex. Sun.	Bus Ex. Sun.	★808 ★808 Sun. only	★810 Ex. Sun.	Bus Ex. Sun.	★812 Daily	★814 Ex. Sun.	Bus Sat. only	Bus Ex. Sat. & Sun.	Bus Sat. only	★898 ★816 Ex. Sun.	★858 ★816 Sun. only	★820 Sun. only
			A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
0.0		Fall River Lv.	6 02		7 07	7 50	8 07	10 59			1s50	2110	4s53	4 55	3120	
10.7		Myricks Due	6 17			8 06	8 22							5 10	3135	
		Somerset			7 23			10 58			2s06	2126	5s09			
		Dighton			7 30			11 02			2s13	2133	5s16			
		Segreganset			7 33			11 05			2s16	2136	5s19			
		North Dighton			7 36			11 08			2s19	2139	5s22			
16.9		Taunton Due			7 47			11 19			2s30	2150	5s33			
	0.0	New Bedford Wharf Lv.				7 40			10 45							8133
	0.8	New Bedford	6 02	7 25		7 50	8 07		10 55	2 25				4 55	3120	8150
	14.8	Myricks Due	6 20			8 06	8 25							5 13	3138	
	14.8	Myricks Lv.	6 27			8 18	8 32							5 20	3143	
	21.0	Taunton Due	6 37	7 51		8 e35	8 48		11 23	2 54				5 30	3157	9120
	21.0	Taunton Lv.	6 41	7 51	7 e51	8 35	8 48	11 e23	11 23	2 54	e2 e54	e2 e54	e5 e38	5 38	3157	9120
	31.9	Mansfield					8 59	11 e39	11 39	3 12	e3 e12	e3 e12	e5 e53	5 56	6114	
	38.7	Sharon						11 e46	11 46	3 22	e3 e22	e3 e22	e6 e02	6 07	6123	
	41.0	Canton Jct.				8 e53		11 e53	11 53	3 28	e3 e28	e3 e28	e6 e15	6 13	6128	
59.7	56.8	Boston Back Bay	7 26	8 e35	8 e35	9 10	9 27	12 e10	12 10	3 45	e3 e45	e3 e45	e6 e32	6 32	6150	10105
		Boston South Sta. Due	7 31	8 40	8 e40	9 15	9 32	12 e15	12 15	3 50	e3 e50	e3 e50	e6 e37	6 37	6150	10110
			A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

★ Regularly assigned cars AIR-CONDITIONED.
‡ Daily except Saturdays and Sundays.
§ Sundays only.

e By connecting train.
s Saturdays only.
bb Stops Saturdays at Myricks, due 5 52 P.M., leave Myricks 5 58 P.M., due Fall River 6 13 P.M.

BOSTON TO NORTH EASTON

Miles			863 Ex. Sun.	851 Ex. Sun.	865 Ex. Sun.	867 Ex. Sun.	853 Sat. only	917 Sat. only	871 Ex. Sun.	881 Ex. Sun.	921 Ex. Sun.	927 Ex. Sat. & Sun.	873 Ex. Sat. & Sun.	875 Sat. only	855 Ex. Sat. & Sun.	857 Ex. Sun.	877 Ex. Sun.	879 Ex. Sun.	927 Ex. Sat.	861 Ex. Sun.		
			A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.		
0.0	Boston South Station Lv.		5 e50	7 15	10 e50	11 e25	12 e24	1 45	2 e30	3 10		e3	e4 e00		4	4 40	5 e15	8 e35		10 e45		
	Back Bay		5 e54	7 19	10 e54	11 e29	12 e28	1 49	2 e34	3 14		3	e4		4	4 44	5 e19	8 e39		10 e49		
8.4	Hyde Park			7 30			12 e39	2 00		3 25		e3			4	4 55						
9.6	Readville			7 34			12 e42			3 29		e3			4	4 59						
16.0	Canton Jct. Due		5 e58	7 42	10 e61	11 e46	12 e43	2 10	2 e52			4	e4	e4 e22	4	5 05	5 e37	8 e58		11 e07		
16.0	Canton Jct. Lv.		6 06	7 43	10 55	11 50	12 e44	2 11	2 53			4		4 23	4	5 06	5 38	9 00		11 10		
16.6	Canton, Mass.		6 08	7 45	10 57	11 52	12 e46	2 13	2 55			4		4 25	4	5 08	5 40	9 02		11 12		
18.9	Stoughton		6 15	7 51	11 03	11 58	12 e52	2 19	3 02			4		4 31	4	5 14	5 46	9 08		11 18		
23.7	North Easton Due		6 23	7 58	11 10	12 05	12 e59	2 26	3 09			4		4 38	4	5 21	5 53	9 15		11 25		
			A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.		

NORTH EASTON TO BOSTON

Miles			500 Ex. Sun.	860 Ex. Sun.	916 Ex. Sun.	918 Ex. Sun.	852 Ex. Sun.	854 Ex. Sun.	862 Ex. Sun.	884 Ex. Sun.	886 Ex. Sun.	888 Ex. Sun.	870 Ex. Sun.	872 Ex. Sun.	876 Ex. Sun.	878 Ex. Sun.	850 Ex. Sun.					
			A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.					
0.0	North Easton Lv.			5 50			6 55	7 08	8 35	9 40	11 30	1 15	2 39	3	4 33	5 31	11 30					
8.8	Stoughton			5 57			7 02	7 14	8 39	9 47	11 37	1 22	2 46	3	4 39	5 38	11 38					
7.1	Canton, Mass			5 49			6 49	7 10	8 39	9 53	11 43	1 28	2 52	3	4 45	5 44	11 44					
7.7	Canton Jct. Due			5 45			6 47	7 22	8 51	9 55	11 45	1 30	2 54	3	4 47	5 46	11 46					
7.7	Canton Jct. Lv.			5 e50			6 48	7 22	8 e54	9 e58	11 e55	1 35		3 e28	6 e13	10 e08	11 48					
13.1	Readville		5 57	5 e57		6 47						1 40										
14.8	Hyde Park				6 32	6 51		7 32				1 44										
23.7	Boston Back Bay		6 10	6 e10	6 48	7 08	7 08	7 48	9 e00	10 e15	12 e10	2 30		3 e45	6 e32	10 e25	12 08					
	Boston South Sta. Due		6 15	6 e15	6 48	7 07	7 13	7 48	9 e05	10 e20	12 e15	2 35		3 e50	6 e37	10 e30	12 10					
			A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	A.M.					

‡ Daily except Saturdays and Sundays.
§ Daily except Saturdays.

e By connecting train.
s Saturdays only.

EXHIBIT A—Sheet 4

Eastern Standard Time

BOSTON TO SOUTH BRAINTREE

Via Quincy Miles	Via West Quincy Miles		611 Ex. Sun.	605 Ex. Sun.	607 Ex. Sun.	615 Ex. Sun.	609 Ex. Sun.	667 Ex. Sun.	691 Sun. only	613 Ex. Sun.	621 Ex. Sun.	665 Ex. Sun.	623 Sun. only	633 Ex. Sun.	625 Ex. Sun.	627 Daily	631 Ex. Sun.	629 Ex. Sun.	785 Ex. Sun.	635 Ex. Sun.	637 Sun. only
			AM.	AM.	AM.	AM.	AM.	AM.	AM.	AM.	AM.	AM.	AM.	AM.	AM.	AM.	AM.	AM.	AM.	AM.	AM.	P.M.
0 0		0 0	Boston, South Sta. Lv.	5 35	6 05	6 20	6 40	7 05	7 15	7§50	7 35	7 50	8 05	8§05	8 20	8 35	9 05	9 35	10 05	10 35	11 05	11§05
5 5		5 5	Atlantic	5 46	6 16	6 31		7 16			7 49		8 16	8§16		8 46	9 16		10 16	10 46	11 16	11§16
6 1			Norfolk Downs	5 48	6 18	6 33		7 18			7 51		8 18	8§18		8 48	9 18		10 18	10 48	11 18	11§18
6 7			Wollaston	5 50	6 20	6 35	6 53	7 20	7 27		7 53		8 20	8§20	8 32	8 50	9 20	9 48	10 20	10 50	11 20	11§20
8 0			Quincy	5 57	6 24	6 39	6 57	7 24	7 30	7§44	7 57		8 24	8§24	8 35	8 54	9 24	9 52	10 24	10 54	11 24	11§24
8 7			Quincy Adams	6 00	6 27	6 42		7 27			8 00		8 27	8§27		8 57	9 27		10 27	10 57	11 27	11§27
		6 1	Montclair																			
		7 5	East Milton																			
		8 6	West Quincy																			
10		11 0	Braintree	6 09	6 30	6 45	7 02	7 30	7 34		8 08	8 08	8 30	8§30	8 40	9 00	9 30	9 57	10 00		11 30	11§30
11 4		12 3	South Braintree Due	6 Dd			7 05		7 37					8§39				10 00				11§33
				AM.	AM.	AM.	AM.	AM.	AM.	AM.	AM.	AM.	AM.	AM.	AM.	AM.	AM.	AM.	AM.	AM.	AM.	AM.

	643 Sat. only	639 Sat. only	641 Ex. Sun.	643 Sat. only	663 Daily	655 Sat. only	649 Daily	651 Ex. Sat. & Sun.	661 Sun. only	673 Ex. Sun.	675 Daily	659 Sat. only	681 Ex. Sun.	683 Ex. Sun.	685 Sun. only	689 Ex. Sun.	693 Ex. Sun.	697 Ex. Sun.	699 Ex. Sun.	707 Ex. Sun.	703 Ex. Sat. & Sun.
	AM.	AM.	AM.	AM.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
Boston, South Sta. Lv.	11§20	11§30	11 35	11§50	12 03	12§10	12 18	12§23	12§23	12 33	1 03	1§20	1 35	2 03	2§03	2 33	3 03	3 05	3 15	3 35	3§57
Atlantic		11§41			12 18				12§34	12 48	1 18			2 18	2§18	2 48			3 48		
Norfolk Downs	11§32				12 18				12§36	12 48	1 18			2 18	2§18	2 48		3 17	3 48		4§09
Wollaston			11 49	12§03	12 20				12§38	12 50	1 20		1 48	2 20	2§20	2 50		3 19	3 50	3 28	4§12
Quincy			11 52	12§07	12 24				12§42	12 54	1 24		1 51	2 24	2§24	2 54		3 21	3 54		4§16
Quincy Adams	11§38				12 27				12§45	12 57	1 27			2 27	2§27	2 57			3 57		4§19
Montclair		11§45																			
East Milton		11§47																			
West Quincy		11§51																			
Braintree	11§44	11§59	11 57	12§13	12 30	12§28	12 35	12§43	12§48	1 00	1 30	1§38	1 58	2 30	2§30	3 00	3 29	3 26	3 35	4 00	4§23
So. Braintree Due			12 00	12§15			12 38						1 58	2 33			3 23	3 29			4§27
	A.M.	A.M.	N'ON	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

	669 Sun. only	723 Ex. Sun.	717 Ex. Sun.	731 Sat. only	721 Ex. Sat. & Sun.	727 Ex. Sat. & Sun.	735 Ex. Sat. & Sun.	737 Ex. Sun.	653 Sun. only	741 Ex. Sun.	743 Ex. Sat. & Sun.	745 Ex. Sat. & Sun.	739 Ex. Sun.	751 Ex. Sun.	677 Sun. only	755 Ex. Sun.	753 Ex. Sun.	763 Ex. Sun.	781 Daily	777 Ex. Sun.	765 Daily
	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
Boston, South Sta. Lv.	4§05	10	4 13	4§16	4§18	4§20	4§25	4 30	4§33	4 40	4§44	4§47	4 50	5 05	5§05	5 13	5 33	6 05	6 33	7 05	7 35
Atlantic					4§29			4 41	4§46				5 01		5§16	5 26	5 46		6 46	7 18	
Norfolk Downs	4§17			4§28				4 43	4§48			4§59			5§18	5 28	5 48	6 17	6 48	7 18	7 47
Wollaston	4§19			4§30			4§40	4 45	4§50						5§20	5 30	5 50	6 19	6 50	7 20	7 49
Quincy	4§23		bb			4§33	4§44	4 49	4§54	4 58				5 12	5§24	5 34	5 54	6 22	6 54	7 24	7 52
Quincy Adams	4§26		bb			4§38		4 52	4§57			5§04			5§27	5 37	5 57		6 57	7 27	
Montclair					4§31								5 03								
East Milton					4§33								5 05								
West Quincy					4§39								5 11								
Braintree	4§30		4 30	4§37	4§44	4§41	4§51	4 55	5§03	bb	5§03		5 16	5 28	5§30	5 40	6 00	6 27	7 00	7 30	7 57
So. Braintree Due	4§34	4 30					4§55		5§03			5§10		5 32			6 03	6 30			8 00
	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

	779 Ex. Sun.	749 Sun. only	787 Ex. Sun.	767 Ex. Sun.	769 Ex. Sun.	757 Daily	871 Sun. only	773 Ex. Sun.	775 Daily
	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
Boston, South Sta. Lv.	8 03	8§33	8 33	8 43	9 03	9 33	10§37	10 20	10 43
Atlantic	8 16	8§46	8 46			9 46	10§50	10 37	10 56
Norfolk Downs	8 18	8§48	8 48		9 17	9 48	10§52	10 39	10 58
Wollaston	8 20	8§50	8 50		9 19	9 50	10§54	10 41	11 00
Quincy	8 24	8§54	8 54		9 22	9 54	10§57	10 45	11 03
Quincy Adams	8 27	8§57	8 57			9 56	10§57	10 42	
Montclair									
East Milton									
West Quincy									
Braintree	8 30	9§00	9 00	9 03	9 27	10 00	10§40	10 45	11 08
So. Braintree Due			9 03		9 30	10 04	10§43		11 11
	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

§ Sundays only.
‡ Daily except Saturdays and Sundays.
s Saturdays only.

bb Stops Saturdays only at Quincy 4 26 P.M. and Quincy Adams 4 27 P.M.
hh Stops Saturdays only at Braintree 5 00 P.M.

SOUTH BRAINTREE TO

	604 Ex. Sun.	606 Ex. Sun.	608 Ex. Sun.	614 Ex. Sun.	616 Ex. Sun.	622 Sun. only	622 Ex. Sun.	638 Ex. Sun.	630 Ex. Sun.	628 Ex. Sun.		636 Ex. Sun.
	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.
South Braintree Lv.	5 04		5 §8	6 14		6§51				6 45	Runs only Sept. 5.	
Braintree	5 07	5 35	5 §8	6 18		6§59		6 26	6 39			6A50 6 50
West Quincy								6 30				
East Milton								6 43				
Montclair								6 47				
Quincy Adams	5 10	5 39	5 §9	6 23		6§56			6 43			6A54 6 54
Quincy	5 13	5 42	6 02		6 27	6§59	6 §9		6 46			6A57 6 57
Wollaston	5 16	5 45	6 05		6 31	7§03	6 43		6 50			7A01 7 02
Norfolk Downs	5 18	5 47	6 08	6 27		7§05			6 52			7A03 7 04
Atlantic	5 20	5 50	6 10	6 29		7§08		6 50				7A05 7 07
Boston, South Sta. Due	5 30	6 00	6 20	6 39	6 48	7§18	6 §6	7 00	7 08	7 08		7A16 7 17
	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.

	688 Ex. Sun.	632 Sun. only	674 Ex. Sun.	666 Ex. Sun.	668 Ex. Sun.	680 Ex. Sun.	742 Ex. Sun.	672 Ex. Sun.	686 Ex. Sun.	598 Ex. Sun.	684 Sun. only	704 Ex. Sun.	748 Ex. Sun.
	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	P.M.
South Braintree Lv.			8 §3								11§20		12 1
Braintree	8 §3	8§35	8 §1	8 §5	9 §5	9 §9	9 §4	10 §5	10 §5	11 §4	11§25	11 §5	12 1
West Quincy													
East Milton													
Montclair													
Quincy Adams		8§39		8 §9	9 §9			10 §9	10 §9		11§29	11 §9	
Quincy		8§39	8 §6	9 §8	9 §2	9 §4	9 §9	10 §2	11 §2	11 §9	11§32	12 §2	
Wollaston		8§36	8 §9	9 §8	9 §5	9 §7	10 §2	10 §5	11 §5	11 §3	11§36	12 §5	
Norfolk Downs		8§38		9 §8	9 §8		10 §5	10 §8	11 §8	11 §5	11§38	12 §8	
Atlantic		8§40		9 10	9 40			10 40	11 10		11§40	12 10	
Boston, South Sta. Due	8 40	8§50	8 §0	9 20	9 §0	10 10	10 15	10 §0	11 20	11 §5	11§50	12 20	12 3
	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.

	736 Sun. only	782 Ex. Sun.	720 Ex. Sun.	708 Ex. Sat. & Sun.	740 Sun. only	728 Ex. Sun.	786 Ex. Sun.	722 Sun. only	732 Ex. Sun.	730 Ex. Sun.	758 Ex. Sun.	784 Daily	7
	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	
South Braintree Lv.	3§23	3 §2	4 20			4 §2		5§31	5 §9		6 §2		
Braintree	3§25	3 §5	4 23	4125	4125	4 §5	5 25	5§35	6 04	6 33	6 §6	7 18	
West Quincy													
East Milton													
Montclair													
Quincy Adams	3§29			4§29	4§29		5 §9	5§39					
Quincy	3§32		aa	4§32	4§32	5 §0	5 §2	5§42	6 §9	6 §8	7 §8		
Wollaston	3§34		aa	4§34	4§34	5 §3	5 §5	5§44	6 13	6 §3	7 12		
Norfolk Downs	3§38		aa	4§38	4§38	5 §8	5 §8	5§48		6 §8	7 14		
Atlantic	3§40	4 10		4§40	4§40		5 40	5§10	6 15				
Boston, South Sta. Due	3§50	4 §0	4 40	4§50	4§50	5 15	5 §0	6§20	6 §5	6 §5	7 §5	7 §5	
	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	

A. Runs only on Sept. 5.
‡ Daily except Saturdays.
‡ Daily except Saturdays and Sundays.

§ Sundays only.
s Saturdays only.
aa Stops Saturdays only at Quincy 4 27 P.M. 4 29 P.M. and Norfolk Downs 4 30 P.M.

Exhibit A, Annexed to Trustees' Answer.

EXHIBIT A—Sheet 4

NTREE

	623 Sun only	633 Ex. Sun.	625 Ex. Sun.	627 Daily	631 Ex. Sun.	629 Ex. Sun.	785 Ex. Sun.	633 Ex. Sun.	637 Sun. only
	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	P.M.
	8 06	8 20	8 55	9 05	9 55	10 06	10 55	11 05	11 05
	8 16		8 46	9 16	....	10 16	10 46	11 16	11 16
	8 18		8 48	9 18	....	10 18	10 48	11 18	11 18
	8 20	8 32	8 50	9 20	9 48	10 20	10 50	11 20	11 20
	8 24	8 35	8 54	9 24	9 52	10 24	10 54	11 24	11 24
	8 27	....	8 57	9 27	....	10 27	10 57	11 27	11 27
	....	....	....	....	....	....	....	....	....
	....	....	....	....	....	....	....	....	....
	....	....	....	....	....	....	....	....	....
	8 30	8 40	9 00	9 30	9 57	10 30	11 00	11 30	11 30
	8 33	....	....	....	10 00	....	....	....	11 33
	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.

	681 Ex. Sun	683 Ex. Sun	685 Sun. only	689 Ex. Sun	693 Ex. Sun	697 Ex. Sun.	699 Ex. Sun.	707 Ex. Sun.	705 Ex. Sat. & Sun.
	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
	1 35	2 03	2103	2 35	3 03	3 05	3 15	3 35	3:57
		2 18	2118	2 48	....	....	....	3 48	4:09
	1 48	2 18	2118	2 48	....	3 17	3 28	3 48	4:12
	1 51	2 21	2121	2 51	....	3 21	....	3 51	4:16
	....	2 27	2127	2 57	....	....	....	3 57	4:19
	....	....	....	....	....	....	....	....	....
	....	....	....	....	....	....	....	....	....
	1 58	2 30	2130	3 00	3 20	3 26	3 35	4 00	4:23
	1 59	2 33	....	....	3 23	3 29	....	....	4:27
	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

	739 Ex. Sun.	751 Ex. Sun.	677 Sun. only	755 Ex. Sun.	753 Ex. Sun.	763 Ex. Sun.	761 Daily	777 Ex. Sun.	765 Daily
	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
	4 30	5 05	5105	5 15	5 33	6 05	6 35	7 05	7 35
	3 01		3118	5 26	5 46		6 46	7 16	
		5 18	3118	5 28	5 48	6 17	6 48	7 18	7 47
		5 22	3120	5 30	5 50	6 19	6 50	7 20	7 49
			3124	5 34	5 54	6 22	6 54	7 24	7 52
			3127	5 37	5 57	....	6 57	7 27	....
	5 03								
	5 07								
	5 11								
	5 16	5 28	5130	5 40	6 00	6 27	7 00	7 30	7 57
		5 32			6 03	6 30			8 00
	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

bb Stops Saturdays only at Quincy 4 26 P.M. and Quincy Adams 4 27 P.M.
hh Stops Saturdays only at Braintree 5 00 P.M.

SOUTH BRAINTREE TO BOSTON

	604 Ex. Sun	606 Ex. Sun.	608 Ex. Sun.	614 Ex. Sun	616 Ex. Sun	622 Sun. only	622 Ex. Sun.	638 Ex. Sun.	630 Ex. Sun.	628 Ex. Sun.	Runs only Sept. 5	636 Ex. Sun.	634 Ex. Sun.	640 Ex. Sun.	646 Ex. Sun.	648 Ex. Sun.	644 Ex. Sun.	654 Ex. Sun.	650 Sun. only	Runs only Sept. 5	662 Ex. Sun.	618 Sun. only	676 Ex. Sun.
	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.		A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.		A.M.	A.M.	A.M.
South Braintree Lv.	5 04		5 58	6 14		6 31				6 45				7 03		7 14			7 31			7 51	
Braintree	5 07	5 35	5 56	6 18		6 35		6 26	6 39			6▲50	6 50	7 02		7 17	7 11	7 20	7 35		7▲34	7 40	7 55
West Quincy								6 29									7 19						
East Milton								6 43									7 28						
Montclair								6 47									7 37						
Quincy Adams	5 10	5 39	5 59	6 22		6 36			6 43			6▲54	6 54					7 24	7 39		7▲39	7 44	7 59	7 59
Quincy	5 13	5 42	6 02		6 27	6 39	6 39		6 46			6▲57	6 57			7 18		7 27	7 42		7▲42	7 47	8 02	8 02
Wollaston	5 16	5 45	6 05		6 31	6 43	6 43		6 50			7▲01	7 02			7 17		7 31	7 46		7▲46	7 51	8 06	8 06
Norfolk Downs	5 16	5 47	6 08	6 27		6 46			6 52			7▲03	7 04			7 14		7 33	7 48		7▲48	7 53	8 08	8 08
Atlantic	5 20	5 50	6 10	6 29		6 46		6 50				7▲05	7 07				7 30		7 40		7▲50	7 55	8 10	8 10
Boston, South Sta. Due	5 30	6 00	6 20	6 39	6 48	6 55	6 55	7 00	7 08	7 08		7▲16	7 17	7 20	7 25	7 30	7 40	7 44	7 50		8▲01	8 05	8 20	8 20
	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.		A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.		A.M.	A.M.	A.M.	A.M.

	688 Ex. Sun	612 Sun. only	674 Ex. Sun.	686 Ex. Sun.	688 Ex. Sun.	680 Ex. Sun.	742 Ex. Sat.	672 Ex. Sun.	686 Ex. Sun.	698 Ex. Sun.	684 Sun. only	704 Ex. Sun.	748 Ex. Sun.	692 Sun. only	702 Ex. Sun.	708 Ex. Sun.	750 Ex. Sun.	700 Sat. only	718 Ex. Sat.	710 Ex. Sun.	712 Ex. Sun.	724 Sun. only	716 Ex. Sun.	714 Ex. Sun.
	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
South Braintree Lv.			8 28								11 20		12 11	12 21	12 22				1 53		2 23			3 22
Braintree	8 33	8 25	8 31	8 55	9 25	9 49	9 54	10 25	10 55	11 24	11 25	11 55	12 14	12 25	12 25	12 55	1 25	1▲54	1 59	2 18	2 28	2 55	2 55	3 25
West Quincy																								
East Milton																								
Montclair																								
Quincy Adams		8 29		8 59	9 29			10 29	10 59		11 29	11 59		12 29			12 59	1 29				3 00	3 29	
Quincy		8 33	8 39	9 02	9 32	9 54	9 59	10 32	11 02	11 29	11 32	12 02		12 30	12 30	1 02	1 33	1▲59	2▲02		2 31	3 02	3 32	3 30
Wollaston		8 36	8 39	9 05	9 35	9 57	10 02	10 35	11 05	11 32	11 36	12 05		12 33	12 33	1 05	1 36	2▲02	2▲05		2 34	3 05	3 35	3 34
Norfolk Downs		8 39		9 08	9 38		10 05	10 38	11 08	11 35	11 38	12 08		12 35	12 35	1 08	1 38	2▲04	2▲08			3 08	3 38	
Atlantic		8 40		9 10	9 40			10 40	11 10		11 40	12 10				1 10	1 40		2▲10			3 10	3 40	
Boston, South Sta. Due	8 40	8 50	8 50	9 20	9 50	10 10	10 15	10 50	11 20	11 45	11 50	12 20	12 30	12 30	12 45	1 20	1 50	2▲15	2▲20	2 35	2 45	3 20	3 20	4 45
	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

	736 Sun. only	782 Ex. Sun	720 Sun.	708 Ex. Sat. & Sun	740 Sun only	728 Ex. Sun.	786 Ex. Sun.	722 Sun only	732 Ex. Sun	730 Ex. Sun.	758 Ex. Sun.	734 Daily	744 Daily	746 Ex. Sun	764 Ex. Sun.	760 Sun. only	776 Daily	Discontinued after Aug. 28	770 Sun. only	768 Daily	788 Ex. Sun	762 Ex. Sun.	752 Daily	780 Sun. only
	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.		P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
South Braintree Lv.	3122	1 12	4 20			4 32		3151	3 59		6 32				8 23		cc				9 38			11133
Braintree	3125	1 16	4 23	4125	4125	4 35	5 25	3155	6 04	6 33	6 36	7 18	7 25	7 59	8 26		8 55			9 47	10 01	10 15	10 32	11138
West Quincy																								
East Milton																								
Montclair																								
Quincy Adams	3129	1 20		4129	4129		5 29	3159					7 29				8 59					10 19		11141
Quincy	3132	1 23	aa	4132	4132	5 00	5 32	3202	6 09	6 38	7 08		7 32	8 04	8 30	8154	9 02	9140	ff	10 04		10 22		11143
Wollaston	3135	1 26	aa	4135	4135	5 03	5 35	3205	6 13	6 42	7 12		7 35	8 08	8 33		9 05		ff	10 08		10 25		11146
Norfolk Downs	3138	1 29	aa	4138	4138	5 05	5 38	3208		6 44	7 14		7 38	8 10			9 08					10 28		11148
Atlantic	3140	1 31		4140	4140		5 40	3210	6 15				7 40				9 10					10 30		11150
Boston, South Sta. Due	3150	1 40	4 40	4150	4150	5 15	5 50	3220	6 25	6 55	7 25	7 35	7 50	8 20	8 45	9110	9 20		9155	10 05	10 20	10 40	10 49	11200
	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.		P.M.	P.M.	P.M.	P.M.	P.M.	N'HT

▲ Runs only on Sept. 5.
d Daily except Saturdays.
f Daily except Saturdays and Sundays.
g Sundays only.
s Saturdays only.
aa Stops Saturdays only at Quincy 4 27 P.M. Wollaston 4 29 P.M. and Norfolk Downs 4 30 P.M.
cc Leaves Sundays only from South Braintree 8 52 P.M.
ff Stops Sundays only at Quincy 9 51 P.M. and Wollaston 9 53 P.M.

EXHIBIT A—SHEET 5

Eastern Standard Time

BOSTON TO PLYMOUTH

Miles		★611 Ex. Sun.	667 Ex. Sun.	623 Sun. only	643 Sat. only	649 Daily	683 Ex. Sun.	693 Ex. Sun.	★717 Ex. Sun.	653 Sun. only	★743 Ex. Sat. & Sun.	753 Ex. Sun.	787 Ex. Sun.	★771 Sun. only
		A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
0.0	Boston, South Sta. ....Lv.	5 35	7 15	8 05	11 50	12 15	2 05	3 03	4 13	4 33	4 47	5 35	8 45	10 15
1	Braintree	6 03	7 54	8 50	12 21	12 45	2 35	3 30	4 30	4 50	5 11	6 00	9 10	10 40
4.4	South Braintree	6 07	7 57	8 54	12 25	12 49	2 39	3 34		4 54	5 15	6 04	9 14	10 44
14.9	South Weymouth	6 14	7 43	9 40	12 32	12 56	2 46	3 41	4 39	5 01	5 22	6 11	9 21	10 51
17.8	North Abington	6 21	7 48	9 45	12 37	1 01	2 51	3 46	4 44	5 06	5 27	6 16	9 26	10 56
19.2	Abington	6 25	7 51	9 48	12 40	1 04	2 54	3 49	4 47	5 09	5 30	6 19	9 29	10 59
21.1	Whitman	6 31	7 56	9 53	12 45	1 09	2 59	3 54	4 52	5 14	5 35	6 24	9 34	11 04
24.6	South Hanson	6 39	.....	9 58	.....	1 03	.....	3 47	4 57	5 20	.....	.....	.....	.....
27.1	Monponsett	6 45	.....	10 04	.....	1 11	.....	3 53	5 02	5 26	.....	.....	.....	.....
28.8	Kingston, Mass.	6 56	.....	10 15	.....	1 20	.....	4 04	5 11	5 35	.....	.....	.....	.....
35.4	Cordage	7 01	.....	10 17	.....	1 24	.....	4 08	5 15	5 39	.....	.....	.....	.....
37.4	Plymouth, Mass. ....Due	7 06	.....	10 21	.....	1 29	.....	4 10	5 19	5 43	.....	.....	.....	.....
		A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

PLYMOUTH TO BOSTON

Miles		614 Ex. Sun.	★628 Ex. Sun.	640 Ex. Sun.	630 Sun. only	656 Ex. Sun.		674 Ex. Sun.	748 Ex. Sun.	682 Sun. only	★782 Ex. Sun.	722 Sun. only	★732 Ex. Sun.	776 Sun. only	788 Ex. Sun.	780 Sun. only
		A.M.	A.M.	A.M.	A.M.	A.M.		A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
0.0	Plymouth, Mass. ....Lv.	.....	5 58	.....	6 54	6 48	Sept. 6	6A45	.....	11 25	11 35	.....	3 03	5 00	8 05	.....
2.0	Cordage	.....	6 02	.....	6 58	6 52		6A49	.....	11 29	11 39	.....	3 07	5 04	8 09	.....
4.1	Kingston, Mass.	.....	6 06	.....	6 42	6 56		6A53	.....	11 33	11 43	.....	3 11	5 08	8 13	.....
10.5	Monponsett	.....	6 15	.....	6 51	7 05		7A04	.....	11 42	11 52	.....	3 20	5 17	8 22	.....
12.6	South Hanson	.....	6 20	.....	6 56	7 10		7A09	.....	11 47	11 57	.....	3 25	5 22	8 27	.....
16.8	Whitman	5 55	6 28	6 44	7 02	7 16	Daily	7A15	8 40	11 53	12 03	3 32	3 33	5 33	8 33	6 40
18.2	Abington	5 59	6 30	6 46	7 06	7 20		7A19	8 14	11 57	12 07	3 36	3 37	5 37	8 37	6 44
19.2	South Abington	6 02	6 33	6 51	7 09	7 23		7A22	8 17	12 00	12 10	3 40	3 40	5 40	8 40	6 47
23.8	South Weymouth	6 07	6 38	6 56	7 14	7 28		7A28	8 22	12 05	12 15	3 45	3 45	5 45	8 45	6 52
	South Braintree ....Due	6 12	6 44	7 02	7 20	.....		7A34	8 28	12 11	12 21	3 51	3 51	5 51	8 51	6 58
	Braintree	6 16	.....	.....	7 25	.....		7A37	8 31	12 14	12 25	3 55	3 55	6 04	10 01	7 02
37.4	Boston, South Sta. ....Due	6 35	7 06	7 25	7 50	7 55		8A08	8 50	12 30	12 59	4 20	6 20	6 25	9 20	10 20
		A.M.	A.M.	A.M.	A.M.	A.M.		A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	N'HT

★ Regularly assigned cars AIR-CONDITIONED.
‡ Daily except Saturdays and Sundays.
‖ Sundays only.
▲ Runs only on Sept. 3.
c By connecting train.
s Saturdays only.

BOSTON TO ROCKLAND AND HANOVER

Miles		Bus Ex. Sun.	Bus Ex. Sun.	Bus Ex. Sat. & Sun.	B-15 Sat. only	Bus Ex. Sun	Bus Ex. Sun.	B-17 Ex. Sat. & Sun.	Bus Sat. only	Bus Ex. Sat. & Sun
		A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
0.0	Boston, South Station ..Lv.	5 c35	7 c15	c1 21 5	c1 2s1 5	2 c05	3 c03	c4113	c4s13	c4147
8.8	North Abington	6 29	7 50	1 2153	1 2s54	2 45	3 43	4 49	4s45	5 27
19.2	Rockland, Mass.	6 39	7 58	1 3000	1 2s03	2 54	3 52	4 58	4s54	5 36
21.0	West Hanover	6 34	8 04	1 3006	1 2s09		3 58	5 04	5s00	5 42
23.1	Whiskers Crossing	6 38	8 08	f1 3010	f1 2s13	....	4 02	5 08	5s04	5 46
23.8	South Hanover	6 41	8 11	1 3013	1 2s16	....	4 05	5 11	5s07	5 49
24.9	Curtis Crossing	a	8 17	f1 3019	f1 2s22	....	4 11	5 17	5s13	5 55
25.6	Hanover, Mass. ....Due	6 49	8 20	1 3023	1 2s26	....	4 15	5 21	5s17	5 59
		A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

HANOVER AND ROCKLAND TO BOSTON

Miles		Bus Ex. Sun.	B-14 Ex. Sun.	Bus Ex. Sun.	Bus Ex. Sun.	Bus Ex. Sat. & Sun.	Bus Ex. Sun.	Bus Daily	Bus Sat. only	Bus Ex. Sat. & Sun.
		A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.
0.0	Hanover, Mass. ....Lv.	.....	6 58	6 51	11 35	2 10	.....	4 05	5s15	5 53
0.7	Curtis Crossing	.....	6 59	a	11 37	2 11	.....	4 06	a	a
2.8	South Hanover	.....	7 03	6 58	11 39	2 13	.....	4 08	5s21	6 00
3.6	Whiskers Crossing	.....	7 07	7 01	11 39	2 17	.....	4 12	5s24	6 03
4.6	West Hanover	5 44	7 10	7 05	11 40	2 20	.....	4 15	5s27	6 07
6.8	Rockland, Mass.	5 51	7 16	7 12	11 47	2 26	3 24	4 21	.....	.....
7.8	No. Abington ....Due	5 59	7 25	7 20	11 55	2 34	3 33	4 30	.....	.....
25.6	Boston, South Station ..Due	6 c30	7 c50	7 c38	12 c30	.....	4 c20	.....	.....	.....
		A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

‡ Daily except Saturdays and Sundays.
a Runs via Broadway.
c By connecting train.
f Stops on signal.
s Saturdays only.

Eastern Standard Time

BOSTON TO BROCKTON, BRIDGEWATER AND MIDDLEBORO

Miles		615 Ex. Sun.	617 Ex. Sun.	★691 Sun. only	★619 Daily	633 Ex. Sun.	631 Ex. Sun.	637 Sun. only	641 Ex. Sun.	★703 Sat. only	671 Ex. Sun.	★709 Sat. only	667 Sat. only	681 Ex. Sun.	★795 Ex. Sat. & Sun.	697 Ex. Sun.	★711 Ex. Sun.	669 Sun. only	723 Ex. Sun.	741 Ex. Sun.	751 Ex. Sun.	763 Ex. Sun.	765 Daily	769 Ex. Sun.	757 Sun. only	775 Daily
		AM	AM	AM	AM	AM	AM	AM	AM	N'ON.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
0 0	Boston, So Sta Lv.	6 40	7 20	7 30	7 35	9 20	9 35	11 05	11 35	12 00	12 15	12 20	12 32	1 35	3 00	3 05	3 48	4 05	4 10	4 40	5 05	6 03	7 35	9 05	9 35	10 45
10 1	Braintree	7 02				9 40	9 57	11 30	11 57					1 56		3 26		4 30		dd	5 28	6 27	7 57	9 27	10 00	11 08
11 4	South Braintree	7 05					10 00	11 33	12 00					1 59		3 29		4 34	4 30		5 31	6 30	8 00	9 30	10 04	11 11
12 9	Braintree Hlds	7 08																		5 06	5 34					
15 0	Holbrook	7 13				9 49	10 06	11 39	12 06				12=55								5 39	6 36	8 06	9 36	10 10	11 17
16 8	Avon, Mass	7 17						11 43					1=00	2 05		3 35		4 40	4 37	5 10						
18 5	Montello	7 21				9 55		11 47					1=04		3 130			4 44	4 41	5 14						
20 0	Brockton	7 25	7 50	8 02	8 08	9 59	10 15	11 52	12 15	12=32	12 47	12=53	1=08	2 14		3 41		4 48	4 45	5 18	5 45	6 42	8 12	9 40	10 16	11 23
21 6	Campello	7 27				9 03	10 18	11 55	12 18				1=15	2 18		3 44	4 20	4 53	4 50	5 23	5 50	6 46	8 16	9 45	10 20	11 27
26 9	Bridgewater	7 47	8 00	8 12	8 19					12=42	12 56	1=02					4 31	5 06	5 02		6 02			9 58	10 33	11 39
30 5	South Bridgewater				8 24						1 02							5 12	5 08		6 08				10 36	11 43
34 6	Middleboro Due	8 00	8 10	8 22	8 30					12=52	1 08	1=12					4 41	5 19	5 15		6 15			10 08	10 45	11 52
		AM	AM	AM	AM	AM	AM	AM	AM	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

MIDDLEBORO, BRIDGEWATER AND BROCKTON TO BOSTON

Miles		604 Ex. Sun.	608 Ex. Sun.	622 Daily	648 Ex. Sun.	★664 Ex. Sun.	618 Sun. only	★670 Ex. Sun.	680 Ex. Sun.	★696 Ex. Sun.	684 Sun. only	702 Ex. Sun.	★786 Ex. Sun.	700 Sat. only	712 Ex. Sat.	714 Ex. Sun.	736 Sun. only	720 Ex. Sun.	728 Ex. Sun.	★726 Daily	★738 Daily	758 Ex. Sun.	764 Ex. Sun.	★760 Sun. only	★770 Sun. only	768 Daily
		AM	AM	AM	AM	AM	AM	AM	AM	AM	AM	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
0 0	Middleboro Lv.		5 10	5 50	6 33	6 52	7 19	7 19		10 35	10 56		1 08			2 41				5 03	6 08			8 18		
4 1	South Bridgewater			5 56		6 58										3 45				5 15	6 18					
7 7	Bridgewater		5 20	6 02	6 43	7 04	7 29	7 29		10 49	11 46		1 18			3 55								8 28		
18 0	Campello	4 42	5 30	6 10	6 51	7 11	7 30		9 26		10 55	12 02		1=32	2 05	4 00						8 02				
14 6	Brockton	4 46	5 34	6 14	6 55	7 15	7 34	7 40	9 30	11 02	11 00	12 06	1 28	1=36	2 09	4 04				5 28	6 28	6 35	8 06	8 38	9 23	9 32
16 1	Montello	4 50	5 38	6 18	6 59	7 19	7 38		9 34		11 04			1=40		4 08						6 39	8 11			
17 8	Avon, Mass	4 54	5 42	6 22	7 03						11 08															
19 6	Holbrook	4 58	5 46	6 26	7 07		7 44		9 40		11 12	12 15		1=46	2 16	4 14		4 46				6 45	8 17			9 39
21 7	Braintree Hlds		5 50	bb 7 11			7 47				11 16															
23 2	So. Braintree Due	5 04	5 53	bb 7 14			7 51				11 20	12 22			2 23	4 20		4 52				6 52	8 23			
24 5	Braintree	5 07	5 56	bb 7 17			7 55		9 49		11 23	12 25		1=54	2 26	4 23		4 55				6 55	8 26			9 47
34 6	Boston, So Sta Due	5 30	6 20	6 55	7 30	7 47	8 20	8 10	10 10	11 35	11 50	12 45	2 00	2=15	2 45	4 40	5 15	6 05	7 00	7 25	8 45	9 10		9 35	10 05	
		AM	AM	AM	AM	AM	AM	AM	AM	AM	AM	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

Also runs Mon. Sept. 5 — Also runs Monday, Sept. 5 — Discont'd after Aug. 28.

‡ Daily except Saturdays and Sundays.
† Sundays only.
% Also runs Monday, Sept. 5.

f Stops on signal.
s Saturdays only.
aa Stops Saturdays only at Montello 12 10 P.M.

bb Stops Sundays only at Braintree Highlands 6 29 A.M., South Braintree 6 31 A.M. and Braintree 6 35 A.M.
dd Stops Saturdays only at Braintree 5 00 P.M.

BOSTON TO SOUTH SHORE POINTS

Miles		621 Ex. Sun.	627 Sun. only	★629 Ex. Sun.	★643 Sat. only	653 Sat. only	631 Ex. Sat. & Sun.	675 Sun. only	659 Sat. only	685 Sun. only	689 Ex. Sun.	★699 Ex. Sun.	715 Ex. Sat. & Sun.	★713 Ex. Sat. & Sun.	★729 Ex. Sat. & Sun.	★731 Sat. only	743 Ex. Sat. & Sun.	677 Sun. only	755 Ex. Sun.	749 Sun. only	767 Ex. Sun.	773 Ex. Sun.
		AM	AM	AM	AM	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
0 0	Boston, South Sta. Lv.	7 50	9 05	10 05	11 20	12 10	12 25	1 05	1 20	2 05	2 35	3 15	3 45	3 51	4 16	4 16	4 44	5 05	5 15	8 35	8 45	10 20
10 1	Braintree	8 06	9 20	10 21	11 41	12 28	12 43	1 21	1 39	2 20	2 50	3 30	3 55					5 30	5 41	9 00	9 03	10 45
11 9	Weymouth	8 12	9 34	10 35	11 45	12 32	12 47	1 25	1 43	2 24	2 54	3 34	3 59	4 12	4 37	4 37	5 03	5 34	5 45	9 04	9 07	10 49
13 3	Weymouth Heights	8 15	9 37	10 38	11 48	12 35	12 50	1 28	1 46	2 27	2 57	3 37	4 02			4 40	5 06		5 48			
14 6	East Weymouth	8 19	9 40	10 41	11 51	12 39	12 54	1 32	1 50	2 31	3 01	3 41	4 06	4 17	4 42	4 42	5 08	5 39	5 51	9 09	9 12	10 54
17 2	Hingham	8 24	9 45	10 47	11 56	12 43	12 58	1 37	1 54	2 35	3 05	3 45	4 10	4 21	4 48	4 48	5 14	5 45	5 57	9 14	9 17	10 59
21 7	Cohasset	8 31	9 52		12 03	12 50	1 05		2 01	2 52	3 23	3 57		4 29	4 55	4 59	5 25	5 51		9 21	9 24	11 06
23 5	North Scituate	8 37	9 57		12 08	12 55	1 10		2 06	2 57	3 28	4 02		4 34	5 00	5 04	5 30	5 56		9 26	9 29	11 11
24 8	Egypt	8 40	10 00		12 11	12 58	1 13		2 09	3 00	3 31	4 05		4 37	5 03	5 07	5 33	5 59		9 29	9 32	11 14
26 6	Scituate	8 44	10 04		12 15	1 02	1 17		2 13	3 04	3 35	4 09		4 41	5 07	5 11	5 37	6 03		9 33	9 36	11 18
27 8	Greenbush Due	8 47	10 07		12 18	1 05	1 20		2 17	3 07	3 38	4 12		4 44	5 11	5 14	5 40	6 06		9 36	9 39	11 21
29 9	Marshfield Hills		10 13			1 11							4 30									
31 0	Sea View		10 17			1 15							4 33									
32 3	Marshfield Centre		10 21			1 19																
34 4	Marshfield		10 26			1 24							4 40									
36 6	Green Harbor																					
37 7	Duxbury		10 34			1 31							4 48									
39 1	South Duxbury Due		10 38			1 35							4 50									
		A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

SOUTH SHORE POINTS TO BOSTON

Miles		616 Ex. Sun	634 Ex. Sun.	★652 Ex. Sun.	★660 Ex. Sat. & Sun.	★660 Sat. only	★658 Ex. Sat. & Sun.	688 Sun.	632 Sun. only	742 Ex. Sun.	★698 Ex. Sun.	710 Ex. Sun.	724 Sun only	740 Sun only	730 Ex. Sun.	★734 Ex. Sun.	★734 Sun. only	752 Daily			
		A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.			
0 0	South Duxbury Lv.					6a30	6 54							3 22			6 17				
1 4	Duxbury					6a36	6 59							3 27			6 21				
2 5	Green Harbor																				
4 7	Marshfield					6a42	7 05							3 33			6 27				
6 8	Marshfield Centre																6 30				
8 1	Sea View					6a48	7 11							3 39			6 33				
9 2	Marshfield Hills					6a52	7 14							3 42			6 36				

MIDDLEBORO, BRIDGEWATER AND BROCKTON TO BOSTON

Miles		604 Ex. Sun.	608 Ex. Sun	622 Daily	648 Ex. Sun	★664 Ex. Sun.	618 Sun. only	★670 Ex. Sun.	680 Ex. Sun.	★696 Ex. Sun.	684 Sun. only	702 Ex. Sun.	★786 Ex. Sun	700 Sat. only	712 Ex. Sat.	714 Ex. Sun.	736 Sun. only	720 Ex. Sun	728 Ex. Sun	★726 Daily	★738 Daily	758 Ex. Sun.	764 Ex. Sun.	★760 Sun. only	★770 Sun. only	768 Daily
		A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
0	0 Middleboro Lv.		5 10	5 50	6 35	6 59	7 12	7 19		10 55	10 50		1 08			2 41				5 03	6 08			8 18		
4	1 South Bridgewater			5 56		7 06																				
7	7 Bridgewater		5 20	6 02	6 49	7 04	7 29	7 29		10 49	10 44		1 18			2 55				5 15	6 18			8 28		
13	0 Campello	4 42	5 30	6 10	6 51	7 11	7 50		9 26		10 55	12 04		‡ 2 03	3 00		3 00	4 00	4 34				8 02		9 28
14	6 Brockton	4 46	5 34	6 14	6 55	7 15	7 54	7 40	9 30	11 02	11 00	12 08	1 28	‡ 2 06	3 04		3 04	4 04	4 38	5 28	6 28	6 33	8 06	8138	9123	9 32
16	1 Montello	4 50	5 38	6 18	6 59	7 19	7 58		9 34		11 04				3 08		3 08	4 08				6 39	8 11			
17	8 Avon, Main	4 54	5 42	6 22	7 03						11 08				3 12		3 12									
19	6 Holbrook	4 58	5 46	6 26	7 07		7 44		9 40		11 12	12 15	Discont'd after Sept. 18.	‡ 2 16	3 16		3 16	4 14	4 46			6 45	8 17			9 39
21	7 Braintree Hids		5 50	bb 7 11			7 47				11 16															
23	2 So. Braintree Due	5 04	5 58	bb 7 14			7 51				11 20	12 23			3 22		3 22	4 20	4 52			6 52	8 23			
24	5 Braintree	5 07	5 56	bb 7 17			7 55		9 42		11 25	12 25		‡ 2 24	3 25		3 25	4 23	4 55			6 55	8 26			9 47
34	6 Boston, So Sta Due	5 30	6 20	6 55	7 39	7 47	8 20	8 10	10 10	11 35	11 50	12 45	2 00	2 15	3 45		3 50	4 40	5 15	6 05	7 00	7 25	9 45	9110	9153	10 05
		A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

Also runs Monday, Sept. 4.
Also runs Monday, Sept. 4.
Discont'd after Aug. 28.

‡ Daily except Saturdays and Sundays.
‖ Sundays only.
% Also runs Monday, Sept. 5.

f Stops on signal.
s Saturdays only.
aa Stops Saturdays only at Montello 12 10 P.M.

bb Stops Sundays only at Braintree Highlands 6 20 A.M., South Braintree 6 31 A.M. and Braintree 6 35 A.M.
dd Stops Saturdays only at Braintree 5 00 P.M.

BOSTON TO SOUTH SHORE POINTS

Miles		621 Ex. Sun	627 Sun. only	★629 Ex. Sun	★645 Sat. only	655 Sat. only	651 Ex. Sat. & Sun.	675 Sun. only	659 Sat. only	685 Sun. only	689 Ex. Sun	★699 Ex. Sun.	715 Ex. Sat. & Sun	★713 Ex. Sat. & Sun.	★729 Ex. Sat. & Sun	★731 Sat. only	743 Ex. Sat. & Sun.	677 Sun. only	755 Ex. Sun.	749 Sun. only	767 Ex. Sun.	773 Ex. Sun.
		A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
0	0 Boston, South Sta. Lv.	7 50	9 05	10 05	11 20	12 10	12 25	1 05	1 20	2 05	2 35	3 15	3 45	3 51	4 16	4 16	4 44	5 05	5 15	8 35	8 45	10 20
10	1 Braintree	8 06	9 20	10 21	11 41	12 28	12 43	1 23	1 39	2 23	2 53	3 33										
11	6 Weymouth	8 12	9 26	10 26	11 46	12 33	12 48	1 28	1 44	2 28	2 58	3 38		4 12	4 37	4 37	5 03	5 30	5 41	9 00	9 03	10 45
13	3 Weymouth Heights	8 15	9 29	10 29	11 49	12 36	12 51	1 31	1 47	2 31	3 01	3 41										
14	0 East Weymouth	8 19	9 33	10 33	11 53	12 40	12 55	1 35	1 51	2 35	3 05	3 45		4 17	4 42	4 42	5 08	5 34	5 47	9 06	9 12	10 54
17	2 Hingham	8 24	9 38	10 38	11 58	12 45	1 00	1 40	1 56	2 40	3 10	3 50		4 24	4 48	4 48	5 14	5 40	5 53	9 12	9 18	10 59
21	7 Cohasset	8 31	9 50		12 03	12 50	1 05		2 01	2 52	3 22	4 02		4 36	5 03	5 03	5 29	5 55	6 08	9 27	9 34	11 06
23	5 North Scituate	8 37	9 57		12 10	12 57	1 12		2 08	2 59	3 29	4 09		4 43	5 10	5 10	5 36	6 02	6 15	9 34	9 41	11 13
24	8 Egypt	8 40	10 00		12 13	1 00	1 15		2 11	3 02	3 32	4 12		4 46	5 13	5 13	5 39	6 05	6 18	9 37	9 44	11 16
26	6 Scituate	8 44	10 04		12 17	1 04	1 19		2 15	3 06	3 36	4 16		4 50	5 17	5 17	5 43	6 09	6 22	9 41	9 48	11 20
27	8 Greenbush Due	8 47	10 07		12 20	1 07	1 22		2 18	3 09	3 39	4 19		4 53	5 20	5 20	5 46	6 12	6 25	9 44	9 51	11 23
29	9 Marshfield Hills		10 13										4 30									
31	0 Sea View		10 17										4 33									
32	3 Marshfield Centre		f10 21																			
34	4 Marshfield		10 26										4 40									
35	6 Green Harbor																					
37	7 Duxbury		10 34										4 48									
39	1 South Duxbury Due		10 38										4 52									
		A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

SOUTH SHORE POINTS TO BOSTON

Miles		616 Ex. Sun	634 Ex. Sun.	★632 Ex. Sun.	★660 Ex. Sat. & Sun.	★660 Sat. only	★658 Ex. Sat. & Sun.	688 Sun.	632 Sun. only	742 Sat.	★698 Ex. Sun	710 Sun.	724 Sun only	740 Sun only	730 Ex. Sun.	★734 Ex. Sun.	★734 Sun. only	752 Daily			
		A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.			
0	0 South Duxbury Lv.					6a30	6154							3122			8117				
1	4 Duxbury					6a36	6159							3127			8121				
2	6 Green Harbor																				
4	3 Marshfield					6a42	7106							3133			8127				
6	8 Marshfield Centre																f8130				
8	1 Sea View					6a48	7111							3139			8133				
9	2 Marshfield Hills					6a52	7114							3143			8137				
11	5 Greenbush Lv.	5 45	6 21	6 42	6157	6a57		7 45	7148	9 18		11 41		3148		6 42	8142	8 58			
12	2 Scituate	5 49	6 24	6 46	7200	7a00		7 48	7151	9 19		11 43		3151		6 45	8145	10 03			
14	3 Egypt	5 53	6 28	6 50	7204	7a04		7 52	7155	9 23		11 47		3155							
15	4 North Scituate	5 56	6 32	6 53	7207	7a07		7 55	7158	9 26		11 50		3158		6 53	8152				
17	4 Cohasset	6 00	6 37	6 57	7211	7a11		8 00	8002	9 30		11 54		4a02		6 58	8156	10 11			
21	9 Hingham	6 08	6 45	7 04	7219	7a19		8 08	8010	9 38		12 02		4a10		7 06	8204	10 19			
24	5 East Weymouth	6 13	6 50		7224	7a24		8 13	8015	9 43		12 07		4a15		7 11	8209	10 23			
25	8 Weymouth Heights	6 16	6 53					8 16	8018	9 46		12 10		4a18							
27	5 Weymouth	6 19	6 57		7229	7a29		8 19	8021	9 49		12 13		4a21		7 17	8213	10 28			
29	0 Braintree Due		7 01					8 23	8025	9 53		12 17		4a25		7 21	8217	10 32			
39	1 Boston, South Sta. Due	6 42	7 30	7 50	7150	7a50	7159	8 40	8050	10 15		12 48		4a50		7 45	8245	10 49			
		A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.			

★ Regularly assigned cars AIR-CONDITIONED.
‡ Daily except Saturdays and Sundays.

‖ Sundays only.
f Stops on Signal.

s Saturdays only.

EXHIBIT A—SHEET 7

Eastern Standard Time

BOSTON TO HYANNIS

Miles		✱817 Ex. Sun.	691 Sun. only	✱819 Daily	703 Sat. only	✱671 Ex. Sun.	797 Ex. Sat. & Sun.	709 Sat. only	795 Ex. Sat. & Sun.	✱711 Ex. Sun.
		A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.
0.0	Boston, South Station Lv.	7 20	7 30	7 55	12 00	12 15		12 20	3 00	3 48
20.0	Brockton	7 50	8 02	8 06	12 32	12 47		12 53	3 30	4 20
26.9	Bridgewater	8 00	8 12	8 19	12 42	12 56		1 02		4 31
34.8	Middleboro	8 14	8 24	8 34	12 54	1 10		1 14		4 43
40.8	Wareham	8 25	8 35	8 45	1 02	1 20			4 09	4 53
51.8	Onset			9 01	1 17	1 35				5 08
54.6	Buzzards Bay Due	8 44	8 54	9 07	1 21	1 39		1 42	4 16	5 13
54.6	Buzzards Bay Lv.			9 15			1 14	1 42		5 18
60.8	Sandwich			9 23			1 30			5 27
69.7	West Barnstable			9 37			1 50			5 42
73.8	Barnstable			9 44			2 00			5 49
76.8	Yarmouth Due			9 49			2 11			5 54
79.9	Hyannis Due			9 55			2 24			6 00
		A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.	P.M.

Discontinued after Sept. 16. Will run except Sundays after Sept. 2. Discontinued after Sept. 2. Discontinued after Sept. 2.

HYANNIS TO BOSTON

Miles		✱684 Ex. Sun.	✱670 Ex. Sun.	✱696 Ex. Sun.	788 Ex. Sun.	✱726 Daily	✱738 Daily	760 Sun. only	770 Sun. only
		A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.
0.0	Hyannis Lv.	5 45		9 30		3 50			8 00
2.4	Yarmouth Lv.	5 51		9 36		3 56			8 06
6.0	Barnstable			9 51		4 01			
9.5	West Barnstable	6 00		9 57		4 07			8 16
16.7	Sandwich	6 10		0 48		4 17			
24.6	Buzzards Bay Due	6 28		10 00		4 30			8 38
24.6	Buzzards Bay Lv.	6 28	6 51	10 07	12 35	4 34	5 38	7 49	8 38
27.0	Onset	6 28	6 56	10 12	12 44	4 39	5 43	7 54	
30.9	Wareham	6 32	7 00	10 18	12 48	4 43	5 48	7 59	
44.6	Middleboro Due	6 50	7 18	10 36	1 06	5 03	6 06	8 16	
52.5	Bridgewater	7 04	7 29	10 49	1 18	5 15	6 18	8 28	
59.3	Brockton	7 15	7 40	11 02	1 28	5 25	6 28	8 38	9 23
79.2	Boston, South Station Due	7 47	8 10	11 35	2 00	6 03	7 00	9 10	9 53
		A.M.	A.M.	A.M.	P.M.	P.M.	P.M.	P.M.	P.M.

Discontinued after Sept. 16. Discontinued after Aug. 28. Also runs Mon., Sept. 5. Also runs Monday, Sept. 5. Discontinued after Aug. 28.

BOSTON TO WOODS HOLE

Miles		✱617 Ex. Sun.	✱691 Sun. only	✱703 Sat. only	✱671 Ex. Sun.	✱795 Ex. Sat. & Sun.	✱799 Ex. Sun.
		A.M.	A.M.	P.M.	P.M.	P.M.	P.M.
0.0	Boston, So. Sta. Lv	7 20	7 30	12 00	12 15	3 00	3 48
19.8	Buzzards Bay	8 48	8 58	1 24	1 41	4 16	4 37
23.8	Monument Beach	8 52	9 02	1 28	1 45	4 20	4 41
26.2	Pocasset	8 56	9 06	1 32	1 49	4 24	4 45
30.1	Cataumet	9 00	9 12	1 36	1 53	4 28	4 49
31.8	North Falmouth	9 06	9 16	1 42	1 59	4 34	4 55
34.6	West Falmouth	9 10	9 20	1 46	2 03	4 38	4 59
38.4	Falmouth	9 16	9 26	1 52	2 09	4 44	5 05
75.0	Woods Hole Due	9 40	9 50	2 16	2 33	5 08	5 29
		A.M.	A.M.	P.M.	P.M.	P.M.	P.M.

Discontinued after Sept. 16.

WOODS HOLE TO BOSTON

Miles		✱670 Ex. Sun.	✱790 Ex. Sun.	✱788 Ex. Sun.	✱738 Daily	✱760 Sun. only
		A.M.	A.M.	P.M.	P.M.	P.M.
0.0	Woods Hole Lv	6 15	9 20	12 00	5 00	7 10
3.8	Falmouth	6 22	9 27	12 07	5 07	7 17
7.4	West Falmouth	6 29	9 34	12 14	5 14	7 24
10.7	North Falmouth	6 35	9 41	12 20	5 20	7 31
11.9	Cataumet	6 38	9 44	12 23	5 23	7 34
13.8	Pocasset	6 41	9 48	12 27	5 27	7 38
15.6	Monument Beach	6 44	9 52	12 30	5 30	7 42
17.4	Buzzards Bay Due	6 48	9 57	12 34	5 34	7 46
75.0	Boston, So. Sta. Due	8 10	11 35	2 00	7 00	9 10
		A.M.	A.M.	P.M.	P.M.	P.M.

Discontinued after Sept. 16. Also runs Sept. 5.

✱ Regularly assigned cars AIR-CONDITIONED.
† Daily except Saturdays and Sundays.
‖ Also runs September 1.

‡ Sundays only.
§ Saturdays only.

[fol. 26] EXHIBIT B, ANNEXED TO TRUSTEES' ANSWER

Stations

On Lines of Old Colony in Massachusetts

Easton	East Walpole	Stanley
Whittendon	Morrills	Norton
Ferry Street	Bass River	South Wellfleet
Gray Gables	South Dennis	Wellfleet
Bourne	North Harwich	South Truro
Sagamore	Harwich	Truro
East Sandwich	Pleasant Lake	North Truro
East Freetown	Brewster	Provincetown
Weld Street	East Brewster	Randolph
Brayleys	Orleans	East Braintree
North Attleboro	Eastham	West Hingham
Plainville	North Eastham	Nantasket Junction
Wampum	Rock	North Cohasset
Lake Pearl	South Middleboro	Black Rock
Wrentham	Tremont	Beechwood
Pondville	Matfield	North Hanson
Walpole Heights	Westdale	Burrage
	Halifax	
	Plympton	

On Lines of Old Colony in Rhode Island

Tiverton	Bristol Ferry	Portsmouth
Middletown		Newport

On Lines of Boston and Providence in Massachusetts

Spring Street	Sharon Heights	Forest Hills
East Foxboro	Springdale	Jamaica Plain
West Mansfield	West Stoughton	Boylston Street
	Mount Hope	

On Lines of New England in Massachusetts

Ashcroft	Morton Street	Medfield Junction
City Mills	Dorchester	Clicquot
Highland Lake	Harvard Street	Millis
Plimptonville	Mt. Bowdoin	Medway
Winslows	Bird Street	West Medway
Fairmount	Uphams Corner	Caryville
River Street	Charles River	North Bellingham
Blue Hill Avenue	Dover	Bellingham Junction
	Farm Street	

[fol. 27] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPEARANCE OF COMMONWEALTH OF MASSACHUSETTS

In the matter of petition for Order No. 289, the Clerk of this Court will please enter my appearance as attorney for the Commonwealth of Massachusetts. The said Commonwealth desires to appear herein in opposition to said petition.

Commonwealth of Massachusetts, Represented by Edward A. Pecce, Asst. Attorney General.

July 7, 1938.

[fol. 28] IN UNITED STATES DISTRICT COURT, DISTRICT OF CONNECTICUT

No. 16562

In the Matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor

FINDINGS OF FACT, MEMORANDUM OF DECISION AND ORDER ON PETITION FOR ORDER 289

On October 23, 1935, the New Haven Railroad Company under Section 77 of the Bankruptcy Act filed in this court its petition for reorganization, and trustees were appointed upon its estate, who later rejected the lease of the properties of the Old Colony Railroad Company. This lease had been made in 1893, and the property of the Old Colony Railroad Company has been operated as an integral part of the New Haven system ever since. Upon rejection of the lease, the Old Colony Railroad Company on June 3, 1936 filed its petition for reorganization as a secondary debtor in these proceedings and upon the prayer of its petition the court ordered the New Haven trustees to continue the operation of Old Colony properties for the account of Old Colony Railroad Company. The properties have thus been operated until the present time.

By the petition now before the court for decision, Old Colony Railroad Company, debtor, together with the Protective Committee of its shareholders and the so-called

Mutual Savings Bank Group Committee, which is a committee representing a large amount of bonds upon the Old [fol. 29] Colony property, and upon other segments of the New Haven system, allege that the operation of Old Colony properties as aforesaid has resulted in substantial losses resulting in the impairment of its capital and assets. The petition further alleges that the trustees in an effort to accomplish carefully considered economies on December 23, 1937 had applied to the Department of Public Utilities of the Commonwealth of Massachusetts for approval of the abandonment of some 88 passenger stations and advised the Department of time tables proposed to be effective March 27, 1938, which contemplated the discontinuance of certain trains and certain rearrangements in train service; that thereupon the Department on its own motion entered into an investigation and ordered hearings which were begun on February 23, 1938, and have been continued from time to time on approximately twenty days from that date until June 16, 1938, and that said hearings are not yet closed. The petitioners seek an order directing the trustees forthwith to effect desirable and proper economies in operation of Old Colony properties.

At the hearing upon said petition which was duly noticed the petitioners and the trustees appeared by counsel and offered evidence. The Commonwealth of Massachusetts appeared generally by its Assistant Attorney General in opposition to the petition and sought and obtained permission to cross examine petitioners' witnesses, but thereafter waived cross examination.

Findings of Fact

1. By my memorandum of decision dated July 2, 1938, upon the accounting of the trustees; I found that the estate of the Old Colony Railroad was chargeable with the sum of $11,789,037.22 on account of the operation of its owned and leased properties from October 24, 1935 to [fol. 30] December 31, 1937, such charge to have priority over the Old Colony mortgage. Of this charge, the sum of $5,775,650. represented the deficit in the operation of property owned by Old Colony.

2. For the calendar year 1937, the deficit in net railway operating income of the property owned by Old Colony was $2,360,862.29, the freight service resulting in a credit

of $275,278.51 and the passenger service in a deficit of $2,636,140.80. Thus far during the year 1938 these deficits are increasing at an even greater rate.

3. Substantially every line owned by the Old Colony is now paralleled with hard-surfaced highways. From 1925 to 1935 the expenditures of the Commonwealth of Massachusetts for highway purposes has increased from about $12,881,000. to $36,719,000., and the number of private automobile registrations issued by the Commonwealth has increased from about 223,000 in 1920 to about 770,000 in 1937. During the same period the number of passengers carried by rail into and out of Boston via the Atlantic, Back Bay and Dorchester gateways has decreased from 29,681,901 to 14,705,115. The record contains no indication of any change in the Massachusetts policies, and specifically policies relating to highway construction and maintenance, to gasoline and other taxes, and to the cost of motor vehicle registrations, which would affect existing conditions of competition between rail and highway travel.

4. By the elimination of about 93 passenger stations, 53 on lines owned by the Old Colony in Massachusetts, 5 on lines owned by Old Colony in Rhode Island, 10 on lines owned by the Boston and Providence in Massachusetts, and 25 on lines of the New England in Massachusetts, and by a revision of the train service, and by other economies that would thereby become possible, the deficit in [fol. 31] operation accruing against the Old Colony estate alone could be reduced by an amount exceeding $658,899. annually.

5. Operating conditions are such that in order to obtain the effect of the economies referred to in paragraph 4 hereof, it is impossible to accomplish the operating changes upon the lines of the Old Colony without also making certain correlative changes upon lines of Boston and Providence and the New England lines. But these lines also are now failing to earn their operating expenses and the effect of said changes will be to reduce their deficits also in net railway operating income.

6. The Department of Public Utilities of the Commonwealth of Massachusetts has entered no order in the premises and a stipulation was incorporated in the record at the request of the Commonwealth from which it appears

that the allegations of Paragraph 6 of the petition, as summarized above, are true.

Upon the foregoing facts and upon the whole record, I come to the following

CONCLUSIONS

1. That during the last twenty years the chief contributory cause of the reduction in passenger traffic by rail, at least in the affected area, is the increase of highway competition, especially by the private automobile and that the greater part, at least, of this reduction is permanent.

This conclusion, in so far as it relates to the past and present, is an inevitable inference from proved facts. In so far as it relates to the future, it is partly the product [fol. 32] of opinion. But the court's opinion embodied in this conclusion, as well as those stated below, is based upon uncontradicted and wholly competent expert testimony including that of Professor Cunningham of Harvard University, who is an expert of national reputation upon railroad problems including those relating to competition between rail and highway competition.

2. The reorganization of the Old Colony cannot be accomplished without the operating changes contemplated, concerning which evidence was offered.

Under Section 77 of the Bankruptcy Act, the court can confirm a plan only if satisfied that the debtor's probable earnings will adequately cover its fixed charges. Reorganization is legally and economically impossible for a railroad which cannot earn its operating expenses. For about three years these properties have been operated by the court through its trustees and during that time every practical means of increasing traffic revenues has received careful consideration. Notwithstanding, it has proved impossible to operate on the basis of present service without a deficit. At the same time, an equal attention to the reduction of operating costs and taxes has proved ineffective to eliminate the deficit. Railroad labor is the largest single item of cost and it is impracticable, if not impossible, to negotiate for lower labor rates upon these lines independently of negotiation on a national scale. The emergency now existing on these lines will not permit of the delay

and uncertainty inherent in such a program. Thus the only alternative is the elimination of service which fails to attract sufficient patronage to be self-supporting.

3. Continuation of passenger service upon the present basis will jeopardize the ability of Old Colony to render freight service which is indispensable to the territory served. [fol. 33] A privately-owned railroad cannot operate without capital, and Old Colony capital is now being depleted at a rate exceeding $10,000 per day.

4. The changes sought are in the public interest.

So much of the passenger service as it is now proposed to terminate, unlike the freight service, is not indispensable to the community served. The changes will unfortunately cause inconvenience to some. But it will also make for faster and more satisfactory service to others. And it is reasonable to assume that transportation by highway will be available to those, comparatively few in numbers, who find themselves without service by rail. But whether the balance of convenience to passengers lies on one side or the other, it is clear that the public interest in the long run will best be served by a policy which is calculated to protect indispensable freight service and to preserve that portion of the passenger service which is shown by experience to be the more vital rather than a policy which is daily bringing nearer the destruction of the entire enterprise.

5. Failure to grant the relief sought would result in the confiscation of private property.

Thus in Mississippi Railroad Commission v. Mobile & Ohio Railroad Co., 244 U. S. 388, where the court was considering an order of a state commission requiring a railroad company to restore certain passenger trains to service, it was said:

"But, while the scope of this power of regulation over carriers is very great and comprehensive, the property which is invested in the railways of the country is nevertheless under the protection of the fundamental guaranties [fol. 34] of the Constitution and is entitled to as full protection of the law as any other private property devoted to a public use, and it cannot be taken from its owners without just compensation or without due process of law. Wisconsin, Minnesota & Pacific R. R. v. Jacobson, 179 U. S.

287; Atlantic Coast Line R. R. Co. v. North Carolina Corporation Commission, 206 U. S. 1; Northern Pacific Ry. Co. v. North Dakota, 236 U. S. 585; Chicago, Milwaukee & St. Paul R. R. Co. v. Wisconsin, 238 U. S. 491.

"If this power of regulation is exercised in such an arbitrary or unreasonable manner as to prevent the company from obtaining a fair return upon the property invested in the public service it passes beyond lawful bounds, and such action is void, because repugnant to the due process of law provision of the Fourteenth Amendment to the Constitution of the United States. Atlantic Coast Line R. R. Co. v. North Carolina Corporation Commission, 206 U. S. 1; Missouri Pacific Ry. Co. v. Nebraska, 217 U. S. 196; Missouri Pacific Ry. Co. v. Tucker, 230 U. S. 340; Northern Pacific Ry. Co. v. North Dakota, 236 U. S. 585."

ORDER

And so upon the record herein and upon the conclusions of the court based thereon,

It is hereby ordered and decreed:

1. That the Trustees hereby are directed as promptly as possible to make effective the operating economies recommended by them by publishing and putting into effect schedules substantially those recommended by them and annexed [fol. 35] to their answer, marked "Exhibit A", and by discontinuing, in their discretion, stops of passenger trains at the stations listed in Exhibit "B" annexed to their answer, and to continue such schedules in effect until and unless they, in their discretion, determine that changes in schedules are desirable because of seasonal changes in service requirements, because of changed business conditions, or for other reasons.

2. That the Trustees be and hereby are directed to continue to investigate the possibility of further operating economies upon and in connection with the lines of Old Colony Railroad Company and Boston and Providence Railroad Corporation and to report to this court their recommendations with respect thereto from time to time.

Dated at New Haven this 9th day of July, 1938.

C. C. Hincks, United States District Judge.

[fol. 36] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION TO STAY EXECUTION AND ENFORCEMENT OF ORDER No. 289

Now comes the Commonwealth of Massachusetts interested in the above entitled cause and respectfully represents that:

1. On the 9th day of July, 1938, this Honorable Court made an order numbered 289 in connection with the above entitled cause.

2. That said Commonwealth intends, in good faith, to appeal from said order of this Court.

Wherefore, said Commonwealth hereby respectfully petitions this Honorable Court to stay the execution and enforcement of said order pending said appeal.

Commonwealth of Massachusetts, Represented by
Edward A. Pecce, Asst. Attorney General.

July 14, 1938.

Petition denied. C. C. Hincks, U. S. D. J.

[fol. 37] IN UNITED STATES DISTRICT COURT, FOR THE DISTRICT OF CONNECTICUT

In Proceedings for the Reorganization of a Railroad

No. 16562

In the Matter of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor

STATEMENT OF THE EVIDENCE

The following is a statement of the material evidence produced upon the trial in the above entitled cause necessary for the consideration of the errors assigned:

OPENING STATEMENT

An opening statement was made by Counsel for the Savings Bank Group Committee, in part as follows:

The Mutual Savings Bank Group Committee represents $7,368,000 Old Colony bonds, which is over 50% of the outstanding bonds in the amount of $14,348,000. Over a year

and one-half ago our Group Committee requested the Trustees to make studies for the purpose of bringing about economies in the Old Colony Railroad Company. Since then several studies have been made but economies have not been made effective. Subsequent to the time the Trus-
[fol. 38] tees filed their accounting indicating huge amounts charged against the Old Colony as a prior claim, our Group felt that they could wait no longer but must request the Court to take some action toward instructing the Trustees.

Mr. Cutter. (addressing the Court): I should like to incorporate by reference, in accordance with the practice ordered by the Court in these proceedings, certain matters already in the record in this cause. I have here a complete list of these documents which I will submit.

Judge Hincks: Unless someone cares to hear them verbally enumerated, I think it will be sufficient if you will hand them to the reporter for inclusion.

The following documents the material portions of which are hereinafter set forth or summarized were incorporated in the record:

(a) Petition of New Haven for Reorganization (Petition for Order No. 1)

On October 23, 1935, The New York, New Haven and Hartford Railroad Company, a citizen and resident of the State of Connecticut, petitioned the District Court of the United States for the District of Connecticut for an order approving its petition as properly filed under Section 77 of Chapter VIII of the acts of Congress relating to bankruptcy.

(b) Order Approving Petition of New Haven for Reorganization (Order No. 1)

This order reads in part as follows:

"Upon due consideration of the petition of The New
[fol. 39] York, New Haven and Hartford Railroad Company, the above named Debtor, verified October 23, 1935, and filed herein this day, stating that such Debtor is unable to meet its debts as they mature and that it desires to effect a plan of reorganization in accordance with Section 77 of Chapter VIII of the acts of Congress relating to bankruptcy, and the Court being satisfied that such petition

complies with said section and has been filed in good faith, it is Ordered:

"(1) That said petition be, and it hereby is approved as properly filed under Section 77 of Chapter VIII of the acts of Congress relating to bankruptcy.

* * * * * * *

"(8) That all persons, firms and corporations whatsoever, and wheresoever situated, located or domiciled, be and they hereby are restrained and enjoined from interfering with, seizing, converting, appropriating, attaching, garnisheeing, levying upon, or enforcing liens upon, or in any manner whatsoever disturbing any portion of the assets, goods, money, deposit balances, credits, choses in action, interests, railroads, properties, or premises belonging to, or in the possession of the Debtor, or from taking possession of, or in any way interfering with the same, or any part thereof, or from interfering in any manner with the operation of its railroad or properties or the carrying on of its business by the Debtor under the orders of this Court, or from commencing or continuing any suits against the Debtor wherein any bond, except a bond for costs, may be required of the Debtor herein, either during the pendency of said proceedings or of subsequent proceedings therein by appeal or otherwise: Provided, that suits or [fol. 40] claims for damages caused by the operation of trains, busses, or other means of transportation may be filed and prosecuted to judgment in any court of competent jurisdiction.

* * * * * * *

"(11) This Court reserves full right and jurisdiction to enter at any time such further orders in the premises as the Court may deem proper, including the right to amend, extend, limit, modify, or otherwise change or rescind the present order."

* * * * * * *

(c) Order Appointing Trustees for New Haven (Order No. 5)

This order is dated November 8, 1935, and reads in part as follows:

"The matter of the appointment of one or more trustees of the Debtor's property, pursuant to the requirements

of the amendment of August 27, 1935 to Section 77 of the Act of July 1, 1898, entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', as amended, having come on for hearing on November 6, 1935, and it appearing to the Court that the Debtor has given notice of this hearing as directed in its Order No. 1 of October 23, 1935, and the Court having heard the recommendations of counsel representing the Debtor and certain insurance companies and savings banks as to the personnel of the trustees, and the Court being of the opinion that the appointment of trustees herein should not disturb the continuity of operations by the corporate organization of the Debtor and should be at minimum cost of the Debtor, and [fol. 41] that the appointment of three trustees would best serve the interests of all parties in interest, it is ordered:

"1. That Howard S. Palmer, President of the Debtor, of New Haven, W. M. Daniels, of New Haven, and James Lee Loomis of Granby, both of those later named being persons who within one year prior to the date of this order have not been officers, directors, or employees, of the Debtor, any subsidiary corporation, or any holding company connected therewith, be and they hereby are appointed Trustees of the Debtor's property.

* * * * * * *

"5. That said Trustees shall have, following said ratification and upon filing such bonds, all the title and shall exercise, subject to the control of this Court and consistently with the provisions of said amendatory Section 77, all of the powers of a trustee appointed pursuant to Section 44 of said Act or any other section of said Act, and, to the extent not inconsistent with said amendatory Section 77, the powers of a receiver in any equity proceeding, and, subject to the control of this Court and the jurisdiction of the Interstate Commerce Commission as provided by the Interstate Commerce Act as now or hereafter amended, the power to operate the business of the Debtor."

* * * * * * *

(d) Lease by the Old Colony Railroad Company to The New York, New Haven and Hartford Railroad Company, Dated February 15, 1893

By the above indenture the Old Colony Railroad Company leased its Railroad properties, together with its leased

[fol. 42] lines, to The New York, New Haven and Hartford Railroad Company for the term of ninety-nine years from March 1, 1893.

(e) Lease Dated April 7, 1888 of Boston and Providence Railroad Corporation to Old Colony Railroad Company

By the above indenture the Boston and Providence Railroad Corporation leased to the Old Colony Railroad Company its Railroad properties for a period of ninety-nine years.

(f) Report of Mailing of Notice of Disaffirmance of Lease Dated February 15, 1893 from Old Colony Railroad Company to The New York, New Haven and Hartford Railroad Company

This report of mailing reads in part as follows:

* * * * * * *

"That pursuant to authority granted in Orders No. 1 and No. 5 herein said Trustees have given notice to Old Colony Railroad Company of the disaffirmance and rejection of the unexpired lease dated February 15, 1893 from Old Colony Railroad Company to The New York, New Haven and Hartford Railroad Company."

* * * * * * *

(g) Petition of Old Colony Railroad Company for Reorganization Herein

This petition is dated June 2, 1936, and reads in part as follows:

* * * * * * *

"6. That on June 1, 1936, said Trustees gave formal [fol. 43] notice to the petitioner of their disaffirmance of said lease; that the afore-mentioned Order No. 1 provided among other things that the Debtor might prior to April 23, 1936 disaffirm any of its existing leases and that the performance by the Debtor of any lease within such period allowed for the disaffirmance thereof should not constitute or be evidence of the adoption or assumption by the Debtor

of any such lease or the waiver by it of its right to disaffirm the same; that by Order No. 56 herein the time within which any such disaffirmance might be made was extended to October 23, 1936; that Order No. 17 herein contains provisions that in case any lease should be disaffirmed or rejected by the Debtor or the Trustees of the Debtor, the operation of the leased property and any payments made [pursuant to the provisions of Order No. 1 paragraph (3) (b) herein] to comply with the obligations of the Debtor under any such lease 'shall be deemed to have been made for the account of the lessors and such payments shall be recovered, set off and made and charged on the earnings and or properties of the lessors prior to any mortgage or other lien thereon, by such method as the Court shall determine.'

"7. That the petitioner is now compelled to assume all the risks of operation of its lines of railroad and is a railroad corporation as defined in Section 77 of Chapter VIII of the acts of Congress relating to bankruptcy.

* * * * * * * * *

"2. That the Trustees of the property of the Debtor herein be authorized and directed to continue until further order to operate the petitioner's property for the account [fol. 44] of the petitioner, and to preserve such basic information and keep such records and accounts in addition to the accounts prescribed by the Interstate Commerce Commission as will permit of such a segregation and allocation as the necessities of the case may require of the earnings and expenses between said property and the remaining property under the administration of the Trustees."

* * * * * * * * *

(b) Order No. 74 Approving Petition of Old Colony Railroad Company for Reorganization Herein

This order is dated June 3, 1936, and reads in part as follows:

"1. That said petition be and it hereby is approved as properly filed under such Section 77.

"2. That until further order the Trustees of the property of the Debtor continue to possess and to operate the petitioner's property, such operation to be for the account

of the petitioner with all the powers, rights, privileges, duties and obligations with respect to said property as have been heretofore granted to and imposed upon or required of them with respect to the property of the Debtor pursuant to any and all of the orders heretofore entered by this Court in this proceeding, and to preserve such basic information and keep such records and accounts in addition to the accounts prescribed by the Interstate Commerce Commission as will permit of such a segregation and allocation as the necessities of the case may require between the [fol. 45] petitioner's property and the remaining property under the administration of the Trustees.

* * * * * * *

"4. That all persons, firms and corporations whatsoever and wheresoever situated, located or domiciled, be and they hereby are restrained and enjoined from interfering with, seizing, converting, appropriating, attaching, garnisheeing, levying upon, or enforcing liens upon, or in any manner whatsoever disturbing any portion of the assets, goods, money, deposit balances, credits, choses in action, interests, railroads, properties, or premises belonging to, or in the possession of the petitioner, or from taking possession of, or in any way interfering with the same, or any part thereof, or from interfering in any manner with the operation of its railroad or properties or the carrying on of its business under the orders of this Court, or from commencing or continuing any suits against the petitioner; provided, that suits or claims for damages caused by the operation of trains, busses, or other means of transportation may be filed and prosecuted to judgment in any court of competent jurisdiction."

* * * * * * *

"(i) Order No. 75 Appointing Trustees of Old Colony Railroad Company

This order is dated June 18, 1936, and reads in part as follows:

"Order Appointing Trustees of Old Colony Railroad Company

"The matter of the appointment of one or more trustees of the property of Old Colony Railroad Company, pursuant to the requirement of the amendment of August 27, 1935 to

[fol. 46] Section 77 of the Act of July 1, 1898, entitled 'An Act to Establish a Uniform System of Bankruptcy throughout the United States', as amended, having come on for hearing on June 18, 1936, and it appearing to the Court that Old Colony Railroad Company has given notice of this hearing as directed in the Court Order No. 74 of June 3, 1936, and the Court having heard the recommendations of counsel representing various parties in interest as to the personnel of the trustees, and the Court being of the opinion that the appointment of trustees herein should not disturb the continuity of operations of the railroad system of The New York, New Haven and Hartford Railroad Company as at present carried on by the trustees of that corporation and that the appointment of the Trustees of the New York, New Haven and Hartford Railroad Company would best serve the interests of all parties in interest, it is ordered:

"1. That Howard S. Palmer of New Haven, Connecticut, W. M. Daniels of New Haven, Connecticut, and James Lee Loomis of Granby, Connecticut, all being the Trustees of the property of The New York, New Haven and Hartford Railroad Company appointed by this Court, and each of those later named being a person who within one year prior to the date of this Order has not been an officer, director, or employee of Old Colony Railroad Company, any subsidiary corporation, or any holding company connected therewith, be and they hereby are appointed Trustees of the property of Old Colony Railroad Company.

. . . . . .

"5. That said Trustees shall have, following the qualifica-
[fol. 47] tion of each of them by said ratification and by filing such bonds, all the title and shall exercise, subject to the control of this Court and consistently with the provisions of said Section 77, as amended, all the powers of trustees appointed pursuant to Section 44 of said Act or any other section of said Act, and, to the extent not inconsistent with said Section 77, as amended, the powers of receivers in an equity proceeding, and, subject to the control of this Court and the jurisdiction of the Interstate Commerce Commission as provided by the Interstate Commerce Act as now or hereafter amended, the power to operate the business of Old Colony Railroad Company, and further, that upon the qualification of said Trustees in the manner aforesaid, title to all of the

property, real, personal and mixed, of every kind and nature whatsoever, of Old Colony Railroad Company shall by this order be vested in said Howard S. Palmer, W. M. Daniels and James Lee Loomis as Trustees of the property of Old Colony Railroad Company.

"6. That, inasmuch as the public interest and the interests of Old Colony Railroad Company and of The New York, New Haven and Hartford Railroad Company require that, until the further order of the Court, the railroad lines and property of Old Colony Railroad Company be operated as an integral part of the system of railroads now being administered by the Trustees of The New York, New Haven and Hartford Railroad Company, said Trustees of The New York, New Haven and Hartford Railroad Company, as such, be and they hereby are directed to continue to possess and operate the properties of Old Colony Railroad Company, such operation to be for the account of old Colony [fol. 48] Railroad Company or the Trustees of its property."

. . . . . .

(j) Order No. 17 Providing That in Case of Later Disaffirmance of Leases Payments Made Do Not Constitute Payments under Terms of Lease

This order is dated November 30, 1935, and reads in part as follows:

"This cause coming on for further hearing on petition of the Debtor with respect to amending Order No. 1 to provide that in case of subsequent disaffirmance payments made on leases should not be regarded as payments of rental or payments in compliance with other covenants in said leases, and the Court being fully advised in the premises, it is ordered:

"(1) That in case payments are made pursuant to the authority granted the Debtor in paragraph (3), sub-paragraph (b), of Order No. 1 to comply with the obligations of the Debtor under leases, and such leases shall be subsequently affirmed and adopted by the Debtor, or such Trustees of the property of the Debtor as may hereafter qualify, or pursuant to a plan of reorganization, said payments shall

be deemed to have been made on account of the rental due from the Debtor under such leases.

"(2) That in case such leases shall be disaffirmed or rejected by the Debtor, or such Trustees of the property of the Debtor as may hereafter qualify, or under a plan of reorganization, the operation of the leased properties shall have [fol. 49] been and said payments shall be deemed to have been made for the account of the lessors, and such payments shall be recovered, set-off, or made and charged, on the earnings and/or properties of the lessors prior to any mortgage or other lien thereon, by such method as the Court shall determine and further reserving all rights and equities of the parties arising from such payments."

* * * * * * *

(k) Order of Reference to Interstate Commerce Commission for Its Recommendations as to the Method or Formula by Which Earnings of the Railroad System Shall Be Segregated and Allocated

This order is dated October 29, 1937, and reads in part as follows:

"* * * the Court finds:

"That the necessities of the case requires a segregation and allocation of the earnings and expenses as between and to the divisions and parts of the railroad system under the administration of this Court in this proceeding which are separately subject to the liens of the various mortgages or are or were separately subject to lease; the Court orders

"That the Clerk of this Court forthwith transmit to the Interstate Commerce Commission, Washington, D. C., a certified copy to be supplied by the Trustees of the Principal Debtor of a volume entitled 'New York, New Haven and Hartford Railroad, Segregation of Earnings,' to the end that said Interstate Commerce Commission after due consideration may transmit to this Court its recommenda- [fol. 50] tion as to the method or formula by which the segregation and allocation specified in the foregoing finding should be made."

* * * * * * *

(l) Report of the Interstate Commerce Commission on Said Order of Reference

This report reads in part as follows:

"Interstate Commerce Commission

Finance Docket No. 10992

New York, New Haven and Hartford Railroad Company Reorganization

Submitted March 4, 1938. Decided April 9, 1938

Method or Formula for the Segregation and Allocation of the Earnings and Expenses of the New York, New Haven and Hartford Railroad Company, Debtor, Between and to Its Various Mortgaged and Leased Lines, Recommended

* * * * * * * *

"After considering all available data as well as the criticisms thereof, we find that the trustees' method of segregation and allocation of the debtor's revenues and expenses between and to its various mortgaged and leased lines is as [fol. 51] fair and equitable as the circumstances will permit, and so recommend to the court.

* * * * * * *

"By the Commission, division 4."

(m) Order Confirming and Accepting Report of the Interstate Commerce Commission (Finance Docket No. 10992) Made April 9, 1938 on Segregation of System Earnings and Expenses

This report is No. 283, dated May 25, 1938, and reads in part as follows:

"* * * the Court, being fully advised in the premises, hereby:

"Finds, Orders, Adjudges and Decrees:

"That the findings and recommendations of the Interstate Commerce Commission embodied in its Report dated April 9, 1938 and filed with this Court April 15, 1938 (Printed Record, 4241) be and they hereby are confirmed and accepted."

(n) Report of Administration of Property of Old Colony Railroad Company and of Providence, Warren and Bristol Railroad Company up to and Including December 31, 1937

This report is dated April 19, 1938, and reads in part as follows:

* * * * * * *

"12. Pursuant to the suggestion of the Court at the continued hearing on Petition for Order No. 217, on December 23, 1937, petitioners have prepared accounts of their administration of the properties of said subsidiary debtors [fol. 52] from October 23, 1935 up to and including December 31, 1937, which said accounts are hereto annexed, made a part hereof, and marked Exhibits 1 and 2, the former consisting of a summary of Accounts covering Administration of the Property of Old Colony Railroad Company (with statements marked A, B and C attached) the latter consisting of a Summary of Accounts covering Administration of the Property of Providence, Warren & Bristol Railroad Company (with statement marked A attached). Said exhibits have been prepared from records and accounts prepared and kept by petitioners pursuant to orders herein.

"13. The charges stated in said accounts for sums paid to or for the account of Old Colony, prior to rejection of leases, for the expenditures for additions and betterments, and the net credits for property retired and not replaced are drawn from the current accounts of petitioners. The revenues and expenses of operation of the properties from June 1, 1936 to December 31, 1937 have been credited or charged, as the case may be, on the basis of the formula referred to the Interstate Commerce Commission by Order of Reference on Petition for Order No. 217, herein, and approved by the Commission's report and recommendation dated April 9, 1938. Expenses for the period prior to June 1, 1936 have been charged on the basis of said formula. Because of the time required and the expense to the estates of the several debtors that would be incurred in examining all waybills and passenger collections for the period prior to June 1, 1936, revenues for that period have been credited on the basis of tests and averages which petitioners believe

reasonably approximate the result of applying the formula to revenues for that period.

[fol. 53]' "Wherefore, petitioners pray that the Court approve the accounts and order that the amounts stated therein constitute a charge on the earnings and/or properties of said subsidiary debtors prior to any mortgage or other lien thereon as expenses of administration and may be recovered out of the earnings and/or properties of Old Colony Railroad Company and Providence, Warren and Bristol Railroad Company by such method as the Court shall hereafter determine, said accounts to be subject to such adjustments as the Court may hereafter order."

* * * * * * *

Howard S. Palmer, James Lee Loomis, Henry B. Sawyer, Trustees.

[fol. 54] EXHIBIT 1, ANNEXED TO REPORT DATED APRIL 19, 1938

Howard S. Palmer, James Lee Loomis, Henry B. Sawyer, Trustees
The New York, New Haven and Hartford Railroad Company, Debtor

Summary of Accounts Covering Administration of the Property of Old Colony Railroad Company

		Old Colony	Boston & Providence	Providence, Warren & Bristol	Total
Payments Under Lease Obligations	(Statement A)	$817,157	$1,178,000	$27,533	$2,022,690
Capital Expenditures (Net)	(Statement B)	38,577	117,295	35	155,907
Total Expenditures		855,734	1,295,295	27,568	2,178,597
Operating Deficits	(Statement C)	4,419,179	1,896,981	96,098	6,412,258
Total including Operating Deficits		5,274,913	3,192,276	123,666	8,590,855
Charges for handling Company Coal and Interest on Investment in Equipment and Other Facilities not included in above Operating Deficits	(Statement C)	500,737	2,269,175	33,755	2,803,667
Grand Total		$5,775,650	$5,461,451	$157,421	$11,394,522

Old Colony and Boston & Providence for period October 24, 1935 to December 31, 1937.
Providence, Warren & Bristol for period October 24, 1935 to June 3, 1936.

New Haven, Conn.
April 13, 1938.

EXHIBIT 2, ANNEXED TO REPORT, DATED APRIL 19, 1938

Exhibit 2

Howard S. Palmer, James Lee Loomis, Henry B. Sawyer, Trustees
The New York, New Haven and Hartford Railroad Company, Debtor

Summary of Accounts Covering Administration of the Property of Providence, Warren & Bristol Railroad Company for the Period June 4, 1936 to December 31, 1937

Payments Under Lease Obligations:

Date Paid	Detail	Period Covered	Amount
June 29, 1936	Dividend on 1,500 shares Preferred and 7,246 shares Common @ 6%	7-1-35—12-31-35	$26,238.00

Capital Expenditures:

A. F. E. No.	Location	Description	Gross Expenses	Operating Expense Ledger Value Retirement	
30918	P. W. & B. Branch	1937 Rail Program	$5,876.13		5,876.13
Total Expenditures					32,114.13
Operating Deficits (Statement A)					277,086.45
Total including Operating Deficits					309,200.58
Charges for handling Company Coal and Interest on Investment in Equipment and Other Facilities not included in above Operating Deficits (Statement A)					85,314.64
Grand Total					$394,515.22

(Statement A omitted in printing)

[fol. 56] (O) MEMORANDUM ON TRUSTEES' REPORT OF ADMINISTRATION OF PROPERTY OF OLD COLONY RAILROAD COMPANY AND OF PROVIDENCE, WARREN AND BRISTOL RAILROAD COMPANY, UP TO AND INCLUDING DECEMBER 31, 1937

This memorandum by Judge Hincks is dated July 2, 1938, and reads in part as follows:

"Under date of April 19, 1937, the N H (New Haven) trustees filed a report of their administration of the O C (Old Colony) properties and of the P W B (Providence, Warren and Bristol) property from October 23, 1935, when these proceedings for reorganization were instituted, up to December 31, 1937. To their report the said trustees appended a prayer that the court approve their account and order that the amounts stated therein be charged upon the earnings and/or properties of said subsidiary debtors prior to any mortgage or other lien thereon as expenses of administration, recoverable out of the earnings and/or properties of O C and P W B by such method as the court shall hereafter determine, said accounts to be subject to such adjustments as the court may hereafter order.

* * * * * * *

The account submitted shows a balance in favor of the N H estate on account of the operation by its trustees of property owned by O C in the amount of $5,775,650, and a balance in favor of the N H estate on account of the operation by its trustees of property owned by the B P in the amount of $5,461,451, both of the foregoing balances covering the period from October 24, 1935 to December 31, 1937; also a balance in favor of the N H estate on account of its operation by its trustees of property owned by P W B [fol. 57] in the amount of $157,421, said balance covering operations from October 24, 1935 to June 3, 1936, and a balance in favor of the N H estate on account of operation by its trustees of property owned by the P W B in the amount of $394,515.22, said balance covering operations from June 4, 1936 to December 31, 1937.

* * * * * * *

"Conclusion

"The account is therefore approved in the amount stated, viz: $11,789,037.22 and may be charged in accordance with

the prayer of the petition appended to the report of the trustees.

"An order accordingly may be submitted and will be settled on July 15, 1938, at 11:00 A. M., D. S. T."

. . . . . .

HARRY W. DORIGAN, called as a witness on behalf of the petitioners, being first duly sworn, testified as follows:

Direct examination.

By Mr. Cutter:

I have been in the service of the New Haven Railroad for twenty-four years in various capacities, having worked in the office of the Division Superintendent of the Old Colony division, in the office of the General Superintendent in Boston, in the office of the Auditor of Disbursements, also Division Accountant, Assistant to the Comptroller, Assistant to the Vice President, Assistant to the President, and since 1935 have been Executive Assistant to the Trustees. My present duties include the preparation of studies for consideration of problems arising in the course of reorganization.

Exhibit 1 is a photostat of a map prepared by the Public Utilities Commission of Massachusetts, colored by New [fol. 58] Haven representatives. The lines of the Old Colony Railroad are shown in red, the lines of the Boston and Providence Railroad in yellow, and a small section of the New Haven lines covered by the New England mortgage in green. The line in black shows the Providence and Worcester leased to the New Haven. The Old Colony consists of approximately 575 miles of railroad with principal lines from Boston to South Braintree and there branching off to the South Shore or Plymouth and to Middleboro, down through Buzzards Bay to Provincetown and the Cape territories, Woods Hole, and also has lines from Lowell and Fitchburg through Taunton to Myricks, branching there for Fall River and New Bedford. The Boston & Providence Railroad has 58 miles of line and runs principally from Boston to Providence, and was leased by the Old Colony on April 1, 1888 for a period of 99 years. The

Providence, Warren & Bristol runs from East Providence to Bristol and to Warren and was leased to the Old Colony on July 1, 1891 for a period of 95 years and 9 months.

Prior to 1893 the Old Colony was operated as an independent railroad but on March 1; 1893 it was leased to the New Haven and from that time until the reorganization, proceeding, it was operated as part of the New Haven system without separate accounts being kept of its operations.

It was known that the local passenger service in and out of Boston had been unprofitable, based on data prepared in earlier years in connection with rate case matters and the substitution of highway busses for lightly patronized train service. A preliminary survey was made of the operations of the Old Colony, which indicated that its operations resulted in deficits before any allowance for rental payments of approximately $2,000,000 per year and after rental payments, the deficit was over $4,500,000. Following this study, the New Haven Trustees on June 2, [fol. 59] 1936, with the approval of the Federal Court, discontinued rental payments and rejected the Old Colony lease. Following that, the Providence, Warren & Bristol lease was rejected by the Trustees of the Old Colony on February 11, 1937. Since the rejection of the Old Colony lease, the Old Colony properties have been operated by the New Haven Trustees for the account of the Old Colony, the latter Company being chargeable with all the losses incurred in the operation of its properties.

Following the preliminary survey of the Old Colony situation, the Trustees instituted studies of segregated earnings for the various parts of the system. In this connection it was necessary to develop a formula or method by which the revenues and expenses for the handling of freight and passenger business over several lines of the system could be reasonably separated between the lines over which the traffic moved. This formula was referred by the Court to the Interstate Commerce Commission and was approved by the Commission and confirmed by the Court.

Based on our analysis, although we have made no detailed check of interstate, a substantial part of the Old Colony freight business would naturally be interstate traffic. Probably over 75% of its freight business moves in connection with other New Haven lines or lines to the north of the Old Colony, such as the Boston and Albany.

I have prepared a statement showing the net results of operation on the Old Colony for the year ended May 31, 1937, based on the theory contained in the segregation formula approved by the Court, and the results are accurate to the best of my knowledge and belief.

(At this point Mr. Cutter offered in evidence the statement of segregated revenues and expenses for the year ending May 31, 1937 for the Old Colony system, which was received without objection and marked Exhibit 2.)

[fol. 60] The Witness (continuing): Exhibit No. 2 shows the segregated revenues and expenses for the year ending May 31, 1937 of the Old Colony system subdivided between the Old Colony Railroad proper, the Boston & Providence and the Providence, Warren & Bristol, the last column showing the total for the system. This exhibit shows a deficit for the year ended May 31, 1937 for the Old Colony Railroad of $1,843,688.90 before considering any charges for the handling of company coal, interest on investment in equipment or interest on investment in facilities, which charges or credits should be made against the revenues and income assigned to the Old Colony, and before considering the leased line rent which was not paid because of the rejection of the lease and which amounted to $2,504,932 including interest on the outstanding obligations of the Old Colony.

The second column on this exhibit, headed "Boston & Providence Railroad", shows the results of the operations of this part of the line for the year ending May 31, 1937 and shows a deficit of $1,136,250.37 after a rental charge of $511,500 paid by the New Haven for the account of the Old Colony. The third column shows the results for the Providence, Warren & Bristol, showing a deficit of $224,134.27 after rental payments of $51,329.17.

The items shown on this exhibit of interest on investment in facilities and interest on investment in equipment and cost of handling company coal increase, to the extent indicated opposite those items, the deficit opposite the item described as net income.

I have prepared an exhibit showing the segregation results on the segregation formula basis for the calendar year 1937, which was prepared according to the method prescribed in the formula approved by the Interstate Commerce Commission and the Court.

[fol. 61] (At this point Mr. Cutter offered in evidence a statement of the segregated revenues and expenses for the year 1937 for the Old Colony system, which was received without objection and marked Exhibit 3.)

The Witness (continuing): This exhibit shows similar results to Exhibit 2, except that these results are for the last calendar year 1937. The Old Colony Railroad deficit before rentals is $2,320,000, the Boston & Providence after rentals is $1,668,000 and the Providence, Warren & Bristol before most of its rentals, a deficit of $190,000. These figures would be increased by the items "Handling Company Coal", "Interest on Investment in Equipment" and "Interest on Investment in Facilities" and exclude the rental payments shown below which were not made.

These deficits shown in Exhibits 2 and 3 were included in the report of administration rendered by the Trustees and were among the items charged, or to be charged, against Old Colony as the result of the approval of that report.

Our studies have developed that the losses incurred by the Old Colony were due to its passenger service. I have prepared an exhibit showing the separate results of the operation of the passenger service and of the freight service of the Old Colony for the calendar year 1937. In the preparation of this exhibit, we used the principles and methods outlined by the Interstate Commerce Commission in their rules and regulations for the apportionment of common expenses as between freight and passenger service. The Commission's formula provides the method to be used in apportioning these common expenses between passenger and freight. These regulations of the Interstate Commerce Commission are applied generally to all Class 1 railroads and are uniform in their application.

(At this point Mr. Cutter introduced a tabulation showing separation of segregated revenues and expenses be-[fol. 62] tween freight and passenger service on the Old Colony Railroad for the year 1937, which was received without objection and marked Exhibit 4.)

The Witness (continuing): Exhibit No. 4 shows for the Old Colony Railroad Company for the year 1937 freight operations resulting in net railway operating income earnings of $275,279 and passenger operations resulting in a deficit in net railway operating income of $2,636,000. The

combined figure of $2,360,000 deficit in net railway operating income is the same figure that is shown in the first column on Exhibit No. 3 covering Old Colony Railroad operations in total. This applies to the lines which are direct property of the Old Colony and does not include its leased line properties. Net railway operating income refers to income before any fixed charges and is the result of operations, including taxes and rentals, as prescribed in the Commission's uniform system of accounts.

This exhibit shows that there is a passenger service operating ratio of 172½. In other words, for every dollar of revenue, operating expenses were taking over $1.70.

Some of the principal reasons for the high expense of the Old Colony local passenger are that travel consists primarily of morning travel into Boston and evening travel out of Boston. These peak hour requirements of service establish the number of crews, the amount of equipment and the terminal facilities required for the passenger business. Another factor contributing to the expense of this operation is the working schedules on which the train crews require payment for a certain number of hours or miles per day, together with monthly guaranties, regardless of the time they actually spend in operating trains. Peak requirements for morning and evening service mean that crews required to handle this service cannot be utilized fully for the full time they must be paid during the remainder of the working day. The peak service requirements also control [fol. 63] the size and type of equipment necessary for the economical handling of the traffic. Morning and evening rush hour requirements call for power units and coaches sufficient to handle large volumes of traffic in a short space of time while for the balance of the day the service requirements are entirely different.

Late in 1936 or early in 1937 the Trustees were requested by the Savings Bank Group and by various other creditor groups to make a study of possible operating economies on the Old Colony and a study was undertaken by me and my staff of the Statistics and Research Department in the nature of an operating survey of the local passenger situation in the east end of the New Haven system, which was largely represented by service wholly on the Old Colony. This study was released about the first of September, 1937.

(At this point Mr. Cutter offered in evidence a book entitled "Survey of Old Colony System Operations", which was received without objection and marked Exhibit 6.)

The Witness (continued): This survey was handled by a group of employees familiar with the local east end passenger situation, including representatives of the Operating Department, the Maintenance of Way Department, the Traffic Department, the Signal and Mechanical Departments. Primary consideration was given in this survey to ways and means of rearranging or changing operations to bring about the continued operation of service to those parts of the Old Colony which were reasonably well supported by the public and reduction in service to such stations or territories where the public had apparently left the rail service for other forms of transportation. It was the purpose to arrange matters so that the remaining relatively few people using the stations or service which would be changed would be inconvenienced as little as possible, but savings could be secured and at the same time the service so revised that im- [fol. 64] provements in the balance of the service would be accomplished. Considerable thought was given to the curtailing of service where there are relatively few patrons involved, in the hope that the continuation of some service could be maintained without such large losses, as it was obvious that unless some revision in service and economies therefrom were devised, it would be only a question of time before this passenger service would not be available with private capital. Certain communities which were lightly patronizing the Old Colony were in time, if this operation continued on its present basis, going to so affect the total results that it would encroach upon and probably bring down service and eventually wipe out service in the sections where patronage was still in a fairly reasonable volume.

This survey indicates that savings were possible in the operation of local passenger service in and out of Boston, including in addition to the lines of the Old Colony and the Boston & Providence those of the New Haven Railroad covered by the New England Railroad Mortgage. The proposed revision not only produces substantial savings in direct train expenses but would produce savings through reduction from double and single track operation, through closing and eliminating passenger and signal stations and other structures and the substitution of flashers for manual

protection at highway grade crossings. The gross savings in expenses to be accomplished was estimated at $1,366,031, the net savings after an estimated loss of $362,041 passenger revenues, having been $973,000 per annum.

Following the hearings before the Department of Public Utilities of Massachusetts in the fall of 1937, where there were granted reductions in train mileage of about 241,000 miles per year, this original survey was reviewed in the light of these changes and as the result, the present proposals, if accomplished, will produce economies in the neighborhood of $1,000,000 per year from direct savings. All of [fol. 65] these savings are not on the lines of the Old Colony but this split-up will be shown in a later exhibit. The economies included in this survey have, in general, been included in the recommendations for rearrangement of service made by the Trustees and annexed to their answer.

I am satisfied that the survey and the recommendations of economies estimated to be effected are reasonable and that the proposed rearrangement and curtailment of service to be recommended is a sound approach to the solving of this particular part of the problem.

(No cross examination of the witness.)

By Mr. Pecce (addressing the Court):

These proceedings have been, during the course of the past four or five months, before the Massachusetts Department of Public Utilities. The railroad attorneys presented their evidence in minutest detail. The evidence was gone into very thoroughly, and if this Court is going to hear the case upon the merits, it would entail a great deal of time and a great deal of expense. I suggest that because this matter has been receiving the attention of the Department of Public Utilities of Massachusetts and further because so much evidence has been received by that Department, that this Court might permit that Department to make a final adjudication of the issues involved.

It seems to me, sir, that a lawfully constituted authority, the Department of Public Utilities, having assumed jurisdiction over this case, it might be left with them.

Will this Court give consideration to that suggestion which I make that the matter be sent back to the Massachusetts Department of Public Utilities before which there have been four months of hearing.

Hincks, J.: Congress has entrusted the vast mass of this property to this Court for purposes of reorganization only; and in the course of these proceedings a petition involving [fol. 66] substantive rights is presented to the Court. The Court is utterly without power to pass the responsibility to any other authority whatsoever, State or Federal. I cannot any more, in the words of the army vernacular, "pass the buck" to the Massachusetts Commission than I can pass it to the Interstate Commerce Commission. Section 77 puts the responsibility on this Court, and that I shall have to discharge as well as I can.

GEORGE T. CARMICHAEL, called as a witness on behalf of the petitioners, being first duly sworn, testified as follows:

Direct examination.

By Mr. Cutter:

I am and have been the Comptroller of the New Haven and the subsidiary companies since November 1, 1934 and am in charge of the accounts of the Company, the recording of all revenues and expenses, and other matters relating to the general books of the Company. I have had a total of approximately 30 years with the Company in various branches of the Accounting Department.

The report of the Trustees of their administration of the operations of the property of the Old Colony was prepared under my direction. Items representing alleged operating deficits were computed on the basis of the segregation study presented by Mr. Dorigan, with certain adjustments to bring the accounting up to date, the aggregate amount of such adjustments being approximately $130,000 on the Old Colony, $108,000 on the Boston & Providence and a little over $1,000 on the Providence, Warren & Bristol, all of which were credits due to the elimination of the railroad retirement tax accrued in 1936 and cancelled in 1937.

I have prepared an estimate of the accounting results [fol. 67] for the operation of the properties of the Old Colony for the first part of the year 1938 on the basis on which the original accounting report was prepared. This estimate, which is for the period January 1, 1938 to June 30, 1938, was based upon three months of actual segrega-

tion and three months on an estimated basis using the same relation for the second quarter of the year 1938 as the figure shown for the second quarter of the year 1937, in order to take care of the trend in traffic and seasonal fluctuation. I believe this estimate to be very reasonable and a close estimate of what the results may be.

(At this point Mr. Cutter offered in evidence a tabulation "Estimated Summary of Accounts Covering Administration of the Property of Old Colony Railroad Company for the period January 1 to June 30, 1938", which was received without objection and marked Exhibit 7).

The Witness (continuing): On this statement there are no payments under leases during the period in question. Capital expenditures are net, which is the net amount due from the Old Colony or Boston & Providence after allowing for salvage credits derived from property retired during that period. Operating deficits computed as stated above are adjusted to allow a credit in taxes covering a refund for the city of Boston on Boston Terminal taxes. The last item covers the charges for company coal, interest on investment in equipment and other facilities—all the intra-system items. These figures show that the total charge for this period against the Old Colony is $1,544,078 and against the Boston & Providence $1,300,073, or a total of $2,844,151 as the estimated charge for the administration of the property of the Old Colony, including its leased line the Boston & Providence. This statement is for a six months' period only and does not include the results of the Providence, Warren & Bristol.

[fol. 68] Under the practice which has been followed in the administration of the Old Colony estate, an accounting including these items, when capable of final determination, will be presented to the Court in due course, with the request that this be charged against the Old Colony estate.

As of May 31, 1938 the Old Colony had $20 in its cash account and had no other current assets or assets susceptible of being readily liquidated. Its only assets, other than fixed assets, were 1,435 shares of stock in the Union Freight Railroad Company, 100 shares of Boston Terminal Company stock, 8 shares of Providence, Warren & Bristol stock, $3,600,000 face amount of First & Refunding 4%

Mortgage bonds of the New Haven, Series "E", which has an indicated present market value of between $450,000 and $576,000.

The outstanding bonded indebtedness of the Old Colony, exclusive of bonds pledged to secure bank loans, totals $14,348,000 and the bank loans total $1,400,000, secured by $2,100,000 of Old Colony First Mortgage bonds. The Old Colony also has 250,776 shares of capital stock outstanding at a par value of $100 per share.

Upon further examination by Mr. Filer, the Witness testified as follows:

The Witness: At the time of a previous hearing on another matter before this Court, there was introduced a cash forecast prepared under my direction which indicated that the New Haven would have an estimated cash balance of $113,000 as of October 31, 1938. Since that time the forecast has been revised to take into account the actual May and June figures and to give effect to the estimated increase in cash on account of the recent increase in passenger rates to 2½ cents per mile authorized by the Interstate Commerce Commission, increasing the estimated cash balance as of October 31, 1938 to $1,182,000. The working balance which the Trustees should have, not having to pay any interest, would be a minimum of $2,500,000 [fol. 69] and if interest payments were being made, the cash balance should be between $4,000,000 and $5,000,000, so that a cash balance of slightly in exces of $1,000,000 would still be far below the danger point.

Upon further examination by Mr. Oliver, the Witness testified as follows:

The Witness: The Old Colony is being charged between $15,000 and $16,000 per day during each day of the continuance of this present operating loss, computed on the basis of the estimated figure of $2,844,000 for the first half of the year 1938. On the basis of the Old Colony operations alone, that amounts to approximately $12,000 per day as a loss which is being charged against the Old Colony.

(No cross examination of the witness.)

FRANK J. WALL, called as a witness on behalf of the petitioners, being first duly sworn, testified as follows:

Direct examination.

By Mr. Cutter:

I am Vice-President in charge of traffic and have been in charge of the Traffic Department for the last eight years, where I am in charge of the making of freight rates and passenger fares and the selling of the services of the railroad. I started to work for the New Haven in 1905 and have been agent, superintendent, assistant to the Vice President, General Traffic Manager and Vice-President.

I am familiar with the operations of the Old Colony, the Boston & Providence and the leased lines of the area between Boston and Providence, including the territory in southeastern Massachusetts which is called the East End or Boston territory and is that part of the New Haven system east of Blackstone and Providence. There are 652 miles of railroad in this territory and there is no area of [fol. 70] similar size in the United States that has so many miles of railroad. There are 115 cities and towns in that territory, with a combined population of 2,000,000 people.

When the railroads serving southeastern Massachusetts were originally built and continuing to about the end of the World War, they were the principal and, in many instances, the only means of regular transportation between the communities. After the World War, private automobiles came into general use, providing transportation for passengers over short distances and the short haul passenger traffic has gradually left the railroads. Beginning about 1920, motor trucks have progressively taken over the short haul freight traffic, depriving the railroad of one of its principal sources of revenue. Today, every mile of railroad in southeastern Massachusetts is paralleled by heavy duty, high speed highways and, as the result of this highway competition, the railroad has lost the greater part of its local traffic which it was primarily built to handle.

The private automobile is by far the principal competitor of the railroad for passenger traffic, having the advantages of heavy duty, high speed highways and being, in most instances, a more convenient form of transportation for short distances. Practically every family in south-

eastern Massachusetts has its own automobile and many of the owners are forced to use them for all travel because they cannot afford to travel by rail and at the same time maintain an automobile. If one passenger is traveling, the railroad is cheaper than transportation by automobile, but if there are two or more, the automobile has the advantage from the out-of-pocket standpoint.

Passenger service has always been the major part of train operation in the Boston territory. At one time the railroad handled the large volume of passengers between points outside of Boston but, today, practically all of that traffic moves by automobile. Of all passengers handled in southeastern Massachusetts, 95% move to or from Boston. [fol. 71] During the last fifteen years, there has been a competitive service built up through the use of private automobiles and buses connecting with the Boston rapid transit system, which serves the outlying districts and maintains connections with the Boston Elevated at various points. A very large part of the area served by the Old Colony is also served by the Eastern Massachusetts Street Railway's bus and trolley lines, some of which run down as far as Fall River, Massachusetts.

I have prepared an exhibit showing the number of passengers during the period from 1917 to 1937 moving in and out of Boston by various passenger rail gateways.

(At this point Mr. Cutter offered in evidence a tabulation dated February 28, 1938, showing Massachusetts passenger car registrations and total passengers into and out of Boston for the years 1917 through 1937, inclusive, which was received without objection and marked Exhibit 8.)

The Witness (continuing): This tabulation shows the number of passengers moving by railroad in and out of Boston each year from 1919 to 1937, inclusive, divided between Atlantic, Back Bay and via Dorchester and also the totals for the three lines. As there is no question that the greater part of the passenger traffic which has been lost by the railroad now moves on the highway, this statement also shows the number of passenger automobiles registered in Massachusetts from 1920 to 1936, inclusive. In 1936 there were more than three times as many automobiles registered as in 1920 and during the same period the railroad lost 57% of the passengers which it formerly

handled to and from Boston. Since 1933 there has been some improvement due to improved business conditions. During the present recession passengers have again declined, and for the first five months of 1938 we carried [fol. 72] 262,643 passengers less than we did a year ago, or a decrease of 4.2%.

There are approximately 42,000 passengers a day who use the local train service operated within the Boston or East End territory, more than 95% of which travel to and from Boston. Of these passengers, 67% travel 15 miles or less, and 20% travel 16 to 25 miles, so that 87% of all the passengers travel 25 miles or less and only 13% travel over 25 miles. This is very unusual and it really is rapid transit service rather than steam railroading.

I have prepared an exhibit to show the density of the passenger traffic in the Boston territory, which illustrates this statement.

(At this point Mr. Cutter offered in evidence a chart of density of passenger traffic for local passenger trains only based on revenue of passengers per day, Monday to Friday average, October 4 through 8, 1937, which was received without objection and marked Exhibit 9.)

The Witness (continuing): This chart which covers a presentation period is plotted to scale as closely as it can be done and the lines extending out from Boston show the direction of the lines of railroad. I have also had prepared under my direction an exhibit which affords some comparison between the traffic on the highways and the traffic on the railways.

(At this point Mr. Cutter offered in evidence "Railroad Passenger and Highway Vehicle Traffic Density Map of Southeastern Massachusetts", which was received without objection and marked Exhibit 10.)

The Witness (continuing): The basis of this exhibit was a chart of highway traffic which was prepared by The Department of Public Works for the Commonwealth of [fol. 73] Massachusetts, showing the average vehicular traffic per day in the year 1936 in southeastern Massachusetts. We have superimposed on this chart the density of the passenger traffic of the railroad which served the same territory. In plotting passenger traffic, we have used the

ratio of two passengers by railroad being equivalent to one automobile, because automobiles usually carry two passengers. This chart shows graphically that the great bulk of passenger traffic in southeastern Massachusetts is on the highway.

Exhibit 10 shows the highway movement in red, the rail movement in black. Both movements are plotted to the same scale.

Our troubles, today, are due to the decline in the number of passengers that travel by railroad, the small average fares paid by each passenger, largely due to the short distances, and the large number of trains which carry only a few passengers. The average revenue per passenger in the Boston territory is 30 cents as compared with 94 cents for the rest of the New Haven, and the average passenger revenue per train mile in the Boston territory is $1.05 as compared with $3.21 for that part of the railroad other than Boston territory and $2.82 for the entire passenger operation. A train mile is one mile of train service. That is, if a train runs 50 miles, it is 50 passenger train miles. If the passenger revenue per train mile in the Boston territory was $3.21 as it is on the rest of the New Haven system, instead of $1.45, passenger revenues in the Boston territory would be about $3,600,000 greater than at present. At the average fare being paid of about 30 cents in the Boston territory, this would take about 12,000,000 passengers, or about as many as handled in the earlier 1920's, or about double the amount handled today.

There are only two ways in which the railroad can improve losing operation and one is by increasing revenues, either by increasing traffic or increasing rates or fares, and second, by reducing operating expenses through dis- [fol. 74] continuance or elimination of operation of trains operated in lightly travelled sections. In our studies we have given consideration to all of these methods. As stated above, 87% of the passenger traffic in the East End territory moves 25 miles or less and they use either monthly commutation tickets or twelve-trip commutation tickets, the commutation fare being on the same basis as on other parts of the New Haven system. Because of the highway competition and of the Boston Elevated and its connecting bus lines and private automobile connections, after giving consideration to increasing commutation rates, we felt satisfied at this time that we would lose enough passengers

so that we would not make any increase in revenue and we believed it inadvisable to try to increase commutation fares at present. The same considerations do not apply to the one-way coach fares which are used by the balance of passenger traffic. And the New Haven joined with other eastern railroads in successfully petitioning the Interstate Commerce Commission for authority to increase these coach fares from 2 cents to 2½ cents per mile. We estimate that the annual increase in revenues from local passenger service in the Boston territories to be expected from that rate increase decision would be somewhere between $150,000 and $200,000 per year.

We have given consideration to the possibility of using other types of equipment which might attract more passengers or reduce expenses and a streamline train is, in fact, operated between Boston and Providence, but we have not been able to find any equipment, and none has been developed, to meet the requirements in the Boston territory where you have the big peaks in the morning and evening and very light traffic during the day. There is no equipment which can be operated with any greater efficiency than the present equipment.

Our records show very clearly that there is very little that can be done to increase traffic in that territory other [fol. 75] than the increases that will come as business improves. The only thing that remains to be done is to reduce the service and the facilities in keeping with the volume of traffic to be moved. As the result of changed industrial conditions and the changed transportation situation, the purposes for which many of these lines of railroad were built no longer exist. The complete system of heavy duty highways which parallel a railroad and which were constructed by the taxpayers and supported very largely by the taxpayers, including one of the biggest taxpayers, the railroad, have so taken traffic away from the railroad that it has reduced the value of the railroad and its earning power.

The stations being operated in the Boston territory are relics of bygone days when we were dependent upon either a horse and carriage to get to the railroad station or had to walk. These numerous facilities are not necessary today and cannot be supported by the present traffic or by any traffic which may be reasonably expected in the future. Many of these stations are less than a mile apart and a number are used by less than 10 passengers daily. It is

quite obvious that these stations which are used by so few people are neither essential nor profitable and one of the most important parts of this problem is discontinuing these stations. Their continuance is not only a financial burden but the time required to make the stops at these stations makes the service less satisfactory to the public than it would be if the trains did not stop there. The best earning trains that we operate are those which make few stops and the most frequent criticism received is because of frequent stops at stations for one to three passengers.

We must face the changed conditions and while some people may be deprived of some convenience which they have previously enjoyed, the stations are so close that it will not be any great inconvenience and I think that most of the people will readily adapt themselves to the changed conditions. It is fair to say that this situation would not [fol. 76] have arisen if it had not been for the fact that the great part of the public had already deserted the railroads for other forms of transportation.

As the result of our studies, a definite plan has been prepared by the Trustees and embodied in their recommendations to the Court in this proceeding. It provides for the elimination of all stops at 93 stations, further provides for the reduction in the amount of passenger train service which has been and is being operated and for certain improvements in train service which will continue to be operated. The elimination of these lightly patronized station stops will make it possible to quicken schedules and most of this improvement will be made on the lines handling the greater part of the traffic. It is proposed to discontinue all passenger service on the lines between Yarmouth and Provincetown, between Norwood and North Attleboro, between Needham Junction and Franklin. On the lines where passenger service will continue to be operated, the trains which will be discontinued are generally those on which, because of light patronage, revenues are less than out-of-pocket expense. Elimination of these stations and curtailment of lightly patronized train service may result in the loss of some traffic, but the speeding up of the schedules will also attract some traffic, and based on our experience, we feel that one will about wash the other and that there will be very little loss of traffic or revenue. In the month of January, or four months after the elimination of 240,000 train miles last September, we handled 2%

more passengers in this territory than we did a year ago, with no substantial difference which would otherwise account for this.

When the automobile became such a factor in short haul transportation, not only the New Haven Railroad but every railroad in the United States was faced with problems they had never encountered and they began rearranging their train service. The New Haven began a general [fol. 77], reduction in train service in 1922. All of the railroads in the United States have been forced to follow this same practice because of the changed conditions. Since 1920 passenger service has been discontinued on 204 of the 652 miles of railroad in the Boston territory, so that, today, it is being operated on 448 miles, or 67% of the total mileage. The balance of the New Haven system is 1381 miles and since 1920 passenger service has been discontinued on all but 688 miles or about half of the mileage. In other words, passenger service has been discontinued on 32% of the miles of railroad in the Boston territory and 52% of the miles of railroad outside of the Boston territory. These reductions or discontinuances of passenger service were all made after the passengers had left the railroad so that the service could not be operated at a profit.

I participated in a survey of Old Colony system operations which has been marked "Exhibit 6" and, in my judgment, all relevant considerations were taken into account in making that survey and I believe that it was made on a sound and proper basis and that the conclusions reached are reasonable.

(At this point Mr. Pecoe advised the Court that he did not intend to cross examination the witnesses who had already testified.)

WILLIAM J. CUNNINGHAM, called as a witness on behalf of the petitioners, being first duly sworn, testified as follows:

Direct examination.

By Major Oliver:

My railroad experience began in 1894 with the Canadian Pacific. Between 1896 and 1899 I was with the Operating Department of the Boston & Albany in Boston; between

[fol. 78] 1900 and 1907 I was General Superintendent of the Lackawanna Railroad at Scranton; between 1907 and 1913 I was with the Boston & Albany as statistician and assistant to the chief operating officers; in 1913 I had nine months service with the Union Pacific as special assistant to the Comptroller; from 1913 to 1914 I was President's assistant with the New York, New Haven & Hartford; and the following year was President's assistant of the Boston & Maine. I was with the United States Railroad Administration, the first few months as Manager of the Operating Statistics Section and the last year as Assistant Director of Operations. That was my last active railroad experience. I have also served twice as special assistant to the Interstate Commerce Commission. My teaching experience has run along somewhat concurrently with the railroad. I became a member of the faculty of the Harvard University School of Business Administration in 1908; and since 1916 have given practically all of my time to the University where I have given and am now giving courses in the graduate school in railroad organization, including finance, railroad operation, highway transportation, transportation of commodities.

I am also employed by the Mutual Savings Bank Group Committee as general technical adviser in this proceeding. I was in fairly close touch with the development of the formula for the segregation studies and the severance studies and worked with Mr. Dorigan and the statisticians and have consulted with the insurance companies in the formulation of the data upon which the plan of reorganization is based. I have given particular attention to the Old Colony because it has been one of the most difficult features of the problem.

I have examined the separation of revenues and expenses of the Old Colony as between passenger and freight, which was introduced as Exhibit 4, and, in my opinion, the separation was competently made and is as accurate as [fol. 79] can be. It was made in conformity with the rules of the Interstate Commerce Commission which apply to all railways in this matter. I am familiar with these rules and when in 1919 the Commission's Bureau of Statistics and Accounts revised the rules, I was frequently consulted by Dr. Lorenz, head of the Bureau of Statistics of the Commission and had something to do with the rules governing the division of joint costs. These rules are as sound as it

is possible to make them in such a difficult matter as the apportionment of the division of joint costs and I thoroughly agree with the rules of 1919, effective January 1, 1920. Since then, several changes have been made, more with the idea of favoring the passenger service than otherwise. In substance I thoroughly agree with the classification as an intelligent and practical method of making the separation. If anything, the classification rather understates the proportion of the joint expenses allocable to the passenger service. I approve the separation as between freight and passenger, of revenues and expenses, made by Mr. Dorigan, shown on Exhibit 4 for the calendar year 1937, which indicates a loss in conducting of passenger operations of $2,260,862.29.

I became interested in the subject of the cost of stopping a train both academically and as a member of the Committee on Railway Economics of the American Railway Engineering Association and also as an adviser for a time on the Signals Committee of the Railway Signals Association and have given a great deal of thought to the cost of stopping trains and have read most of the available literature on the subject. I have also read the transcript of the testimony given by Mr. Storms on this subject in the current case before the Department of Public Utilities. In that case Mr. Storms suggested that a minimum cost of stopping a typical train in Old Colony territory would be 34 cents. That strikes me as being extremely conservative and as being an absolute minimum for a light train, and [fol. 80] the record shows that he included only the cost of fuel and water and did not give weight to the effect of stopping and starting on locomotive and car maintenance costs, which adds very measurably to maintenance cost. My opinion is that 34 cents is absolutely a minimum cost and that reasonably a higher figure could be taken.

My views as to the factors responsible for the tremendous loss in passenger operation of the Old Colony would correspond so closely to the opinions and views expressed by Mr. Wall as to be more or less repetitious but I do not think there can be any doubt that the principal cause is the effectiveness of highway competition in the greater use of the private automobile and the bus. The territory served by Old Colony is unusually well equipped with hard surface highways which are kept open throughout the year. Practically every part of the Old Colony system is paral-

leled by highways of that type and the so-called secondary roads in that region are constructed and maintained to an unusually high standard. The railroad has met with highway competition at practically every station on the line. The extent to which that competition is growing is indicated by Mr. Wall's figures, showing the increase in automobile registration. I was able to get an estimate from the motor vehicle department for 1937 which, unofficially, they gave as 770,000, which is an increase over the figure of 714,000 for 1936. The Massachusetts state expenditures on state highways, not including expenditures on the county township roads or city streets nor including Federal aid, was in round figures in 1921 $7,900,000, 1925 $12,900,000, 1930 $21,900,000, 1935 $36,700,000. During the period between 1931 and 1935 the annual expenditures increased 300%.

Not only have we an increase in motor vehicles and an increase in highway expenditures and an increase in hard surface roads, but we have also in Massachusetts a fairly liberal policy of low registration fees and relatively low [fol. 81] gas taxes. All these things together have worked to make the competition of the motor vehicles both as to buses, but mainly as to private automobiles, very destructive from the railroad viewpoint. For example, the New Haven Railroad finds it more profitable to use highways than its own rails for the transportation of section men and the material used for maintenance. The use of these motor trucks on the Old Colony system is estimated as resulting in an annual savings of $100,000 per year in man hours saved and lengthening of sections with equal or better supervision.

"Major Oliver: Professor Cunningham, have you any views with reference to the prospects of the ability of the Old Colony to regain this lost passenger business, and if you have, please state it.

The Witness: Yes, I have views. I think that this serious loss in passenger traffic on the Old Colony is not a cyclical decline. In my opinion, it is, in most part a permanent loss to the railroad. It is, in the most part, due to a fundamental change in travel habits, and should not be regarded as something of a temporary nature. The situation today is that with the greater number of automobiles and buses in use, the steady improvement of such vehicles in comfort, reliability, economy and flexibility, constantly expanding network of first-class highways, and the policy of the state

to be moderate in gas taxes and registration fees, the Old Colony has permanently lost the greater part of its local passenger traffic. That being the case, in my opinion, I do not believe there should be further temporizing in the vain hope that the lost passengers will return to the rails. Such further temporizing seriously threatens the continued existence of the railroad. Corrective steps in curtailment of service and resultant economies of operation are vitally necessary. There is no economic escape from a realistic recognition of the fact that the greater part of the passen- [fol. 82] gers who used the railways twenty years ago are now using and will continue to use the highway. The Old Colony Railroad is a victim of forces similar to those which brought the earlier downfall of the network of trolley lines in Massachusetts.

Major Oliver: Professor Cunningham, in your opinion, have the methods pursued by the Trustees' staff in their proposals for the Old Colony been proper methods, and is their approach to the problem a reasonable approach?

The Witness: Yes, I think so. My opinion is that the problem of reducing the operating losses was approached in an earnest effort to find the right solution; that the field was carefully explored, that the conclusion that fares could not be increased was sound; that the conclusion that there is little hope of increasing traffic by lower rates or additions to service was reasonable, and that the conclusion that a curtailment in service is necessary was justified by present conditions.

Major Oliver: Is it your opinion that the heavy operating loses to which you have referred constitute the most serious obstacle to the successful reorganization of the Old Colony Railroad?

The Witness: Yes. Obviously, a railroad company with operating revenues substantially less than operating expenses, taxes and charges for joint facilities and equipment, is not only unable to support any capitalization whatever, but unable to raise cash for taxes and operating expenses.

Major Oliver: In your opinion, does an emergency exist which requires immediate correction?

The Witness: I believe that such an emergency exists. The operating deficits, without taking into account the segregation study below-the-line items, namely a charge for

moving company fuel and interest charges on value of equipment and facilities belonging to other parts of the system but used in part by the Old Colony—the operating deficit last year was $2,320,000 in round figures. The ac- [fol. 83] crued charges by the New Haven Estate against the Old Colony as of December 31, 1937, was over $11,000,000. These heavy charges and the current deficits which during the first six months of 1938 is approximately 30% more than in 1937——

Major Oliver: For the same period of 1937?

The Witness: Yes—are charges which have priority over the claims of bondholders. The continuing deficits in effect are consuming the Estate of the Old Colony and eventually these prior claims will be in excess of the investment value of the property.

A real emergency exists which requires immediate and effective corrective action. Such action has already been too long deferred. The Savings Bank Committee recognized the danger a year and a half ago, and urged the Trustees to act at that time. It is my opinion that if these ruinous losses are not substantially reduced, the territory served by the Old Colony Railroad will be faced by the probability of complete abandonment of all rail service, both freight and passenger.

In this desperate situation, it is unfortunate that the proposed curtailment in service may cause inconvenience to a few, but they must give way in the interest of the very much greater number who would be much more seriously damaged by the enforced suspension of all rail service if the Old Colony Railroad is unable to continue operation."

(No cross examination of the witness.)

STANLEY F. MACKAY, called as a witness on behalf of the Trustees, being first duly sworn, testified as follows:

Direct examination.

By Mr. Filer:

I am employed as General Superintendent of Transportation by the New Haven Trustees. I entered the service

[fol. 84] in 1904 and was employed in various positions, including ten years as chief clerk to the General Manager, two years as Superintendent of the Old Colony division, four years as Superintendent of the Providence division, one year as Superintendent of Transportation, and three years as General Superintendent of Transportation. As General Superintendent of Transportation my duties consist principally of planning freight and passenger service, the use and distribution of equipment and its assignment to territories and, in general, checking the actual transportation of freight and passengers.

"Mr. Filer: If your Honor, please, Exhibit A attached to the answer contains the Trustees' recommendations as to time table changes. I assume that that is now a part of the record. If not, I will ask that it be made a part of the record.

Judge Hincks: I think any exhibit attached to the answer which is on file already is part of the record."

. . . . . .

The Witness (continuing): I participated very little in the actual committee work in laying out the original plan but I was present at practically all of the conferences in transmitting that into a practicable time table, and have been through the plan several times.

"Mr. Filer: In your opinion can the total economies expected through train service changes be accomplished if only the train service changes proposed by the Old Colony Railroad are put into effect?

The Witness: No, I think they can't. In fact, I know they can't.

Mr. Filer: Can you explain why that is so?

The Witness: Yes, because while this was planned originally because of losses on the Old Colony, in working out the plan it was just about impossible to gain the full benefit of the savings unless we used all of the territory indiscriminately; in working out these runs, etc., we gave no thought [fol. 85] to the individual ownerships, and that was because of the use of equipment, in which I might term a pooling sense.

In other words, in taking the crews, engines, and equipment and translating them into runs in actual service, we had to take the equipment that would come in on, we will

say, the first train in the morning and turn that on the first available train that we could use it on, that required that kind of equipment, and in that way got a greater utilization of equipment that we otherwise could have.

Mr. Filer: Can you illustrate what you mean by pooling of equipment, that is, in this local east end passenger train service?

The Witness: Yes, in that very way. In taking the engine, for instance, that comes in on the first train in the morning and turning it on the first train that we can use it out on, we get what we call a fast turn. If we were confined to individual territories on that we would not have available the train on which to use it necessarily, so that we take the first one that is available to turn the equipment on it—both equipment and at times crews and the locomotives.

Mr. Filer: Can you illustrate the use of cars by pooling the equipment?

The Witness: Well, in that same manner. For instance, the Trustees recently arranged for the remodeling of fifty Westchester coaches. And we worked up thirteen sets of equipment to cover seventy different trains, thirteen groups of which required approximately the same type of equipment, the same number of cars. And we worked it out, of course, without any thought of the territory. When we got this worked out— a few days ago I finished it up—fifty per cent of the mileage was on territory of the Old Colony, thirty per cent on territory of the Boston & Providence, and twenty per cent on the New England.

[fol. 86] Now then, if that had been operated separately we could not have made some of the turns we did, and it would have required more equipment, just how much I do not know because I have not worked it up.

Mr. Filer: Will you explain how some of these trains operate in one run over more than one of the lines involved in this proceeding?

The Witness: Yes, we have a perfectly good example of a round trip of service that operates between Providence and Boston via what is called the Wrentham line which is owned from Adamsdale Junction to Norwood Junction by the Old Colony. This train leaves Providence at 5:30 in the morning, runs on the New Haven territory, the Providence & Worcester leased territory to Adamsdale Junction—I can tell you the mileage of that, I think—it operates about five or six miles to Adamsdale Junction, twenty-one miles on

the Old Colony to Norwood Junction, then a little over five miles on territory of the New England to Readville, and then about ten miles on territory of the Boston & Providence into Boston. In the afternoon that train leaves Boston and comes back to Providence via that same route. That is, that same train, as we call it, that is a round trip of service over one line. If that was operated with one engine, one crew, etc., the crew would be on duty about fourteen hours and thirty minutes. Because of being on duty fourteen hours and thirty minutes it makes a high cost job, time and a half after the tenth hour, providing there is a two hour lay-off in between.

Now then, in order to avoid that, we operate a train from Boston to Providence via the Boston & Providence Railroad territory. It comes down in the morning and turns back and goes up on this first train in the morning via the Wrentham line. In the afternoon a separate engine and crew operated this train from Boston to Providence via the same [fol. 87] route and then it goes back to Boston on the Boston & Providence territory. In that way both crews make less than eight hours, or approximately eight hours.

Mr. Filer: And the saving in that short time accrues directly to the Old Colony?

The Witness: Yes, because if the Old Colony had to operate that service they would have the entire cost of that crew, whereas the Boston & Providence has more service and it probably would not be as burdensome on the Boston & Providence as it would on the Old Colony."

The Witness (continuing): If we had to confine the use of equipment to ownership territory, it would take far more equipment to operate the service and this would be true of each of the owning companies. Similarly, we would have to have more spare equipment than now required, which is now pooled and used where needed.

For the 52 locomotives and gas rail cars required to cover this local passenger service, something over 36% were planned to operate on either two or three of the territories, so that a segregation of these locomotives as between the properties would require a greater number.

A substantial number of these trains operate in more than one state and practically all of them carry United States mail, interstate baggage and interstate passengers, or one or the other.

From 1928 to 1930 I had charge of the western half of the Old Colony Railroad as Superintendent of Divisions and from 1930 to 1934 I was in charge of the Providence Division and had an intimate knowledge of the details of the operation for passenger and freight service. In my opinion, the freight service is of paramount importance to the communities involved in this East End territory. If Exhibit A attached to the Trustees' answer is put into effect as a time table, there will be very substantial operating savings without any question.

(No cross examination of the witness.)

[fol. 88] Henry M. Erving, called as a witness on behalf of the Trustees, being first duly sworn, testified as follows:

Direct examination.

By Mr. Filer:

I am employed by the Trustees of the New Haven and of the Old Colony as General Passenger Agent. My employment started in Boston in 1919, where I worked until 1924 and was then transferred to New Haven where I remained until 1928 when I was appointed as Assistant to the General Passenger Agent and served in that capacity until September 31, 1935 when I was transferred to Boston as General Passenger Agent in charge of train service. My duties are to supervise and have charge of train service, the preparation of time tables, assignment of Pullman car space and all features connected with regular passenger train operation.

I personally assisted in preparing the time table schedules marked Exhibit A attached to the Trustees' answer. In their preparation, representatives of the Operating, Research and Passenger Traffic Departments made an intensive study of travel on the trains and the use of stations and prepared the plan for the rearrangement of the schedules, so that the new arrangement would provide suitable transportation facilities for the majority of riders. In reducing mileage those trains were eliminated which were not handling a sufficient amount of traffic to cover operating costs. Traffic needs were again studied so that trains handling a

considerable number of passengers were not primarily affected. In those cases where we did eliminate a heavy train, the schedules on either side were so adjusted that, in the final analysis, the large majority of the travellers were not seriously inconvenienced. Being familiar with the working conditions and requirements in the various communities, it is my thought that the new service, as lined up in Exhibit A, is reasonable and that a very small percentage of traffic [fol. 89] now using the east end service would be discommoded. In the elimination of stops at the lightly patronized stations, we took into consideration, the number of passengers using the stations, the distance to the nearest stations where stops had been continued, the cost of maintenance and the possibilities of improving service by operating on faster schedules. It is our judgment, that quickening the running time brought about by the discontinuance of stops at these stations will attract additional traffic to the railroad.

To determine the number of revenue passengers using the stations and riding on local passenger trains, we have two regular test periods, in January and in July, as typifying normal winter and summer periods, at which time the conductors make a detailed report of all tickets and passenger fares collected, showing the point of origin, destination and class of ticket. We made additional tests in September, October and November of 1937. We first analyzed the revenues from passengers as well as mail, express, newspapers, etc. for the January 1937 test period, but to bring our analysis up to date we further reviewed the adjustments upon the basis of the test period of 1938.

Operation in this East End territory involves operation over three separately owned lines, the Old Colony lines, the Boston & Providence lines and the New England Railroad lines. The line between Boston and Providence is owned by the Boston & Providence Railroad. The line between Boston and Readville is over the Boston & Providence, from which point to Blackstone the operation is over the New England. Service between Boston and East Dedham is over the Boston & Providence Railroad. Between Boston and New Bedford—Fall River the trains are operated on the line of the Boston & Providence between Boston and Mansfield and over the line of the Old Colony between Taunton and New Bedford and between Myricks and Fall River. In the service from Boston to North Easton opera-

[fol. 90] tion is over the Boston & Providence from Boston to Stoughton and continues over the Old Colony from Stoughton to North Easton.

The total passenger train miles at present operated in this territory, excluding through trains, is 2,471,568 per annum and under the proposed new time table, there will be operated 1,981,488 miles, or a decrease of 490,080 miles per annum.

On the Old Colony which now operates 1,519,992 miles per annum, there will be a decrease of 279,528. On the Boston & Providence which now operates 741,480 miles, there will be a decrease of 131,376. On the New England there are now operated 210,096 miles and there will be a decrease of 79,176. There will be 93 stations at which no passenger trains will stop but the total number of stops proposed to be eliminated is 141,057 per annum.

It is my opinion that all of the economies heretofore mentioned will be effected through the proposed time table covering service on the Old Colony, Boston & Providence and New England Railroads. A substantial portion of these economies could not be made on the Old Colony without effecting economies on the other lines because the varied nature of the service performed in this territory makes it impractical in many cases properly to effect operating requirements without affecting two or three railroads.

(No cross examination of the witness.)

CHARLES F. CALEY, called as a witness on behalf of the Trustees, being first duly sworn, testified as follows:

Direct examination.

By Mr. Filer:

I am employed by the Trustees of the New Haven and of the Old Colony as Transportation Analyst. I have been employed by the New Haven twenty-eight years, including [fol. 91] service in the Freight Accounting Department, in the Auditor of Disbursements' office, Travel Accountant, Divisional Accountant, ten years with the General Manager and for the past two years with the Research Department in my present position. As Transportation Analyst my

principal duties consist of analyzing various lines of railroad to determine their earning power.

I have made a study to determine the results from the operation of local passenger service on lines of the New England, which indicates that substantial losses are incurred in the operation of local passenger service on the lines of the New England in the Boston territory.

(At this point Mr. Filer offered in evidence a tabulation of local passenger service east of Boston Switch, Rhode Island, and Blackstone, Massachusetts, and revenues and expenses for the representative month October, 1938, which was received without objection and marked Exhibit 11.)

The Witness (continuing): Exhibit 11 shows that the total passenger operating revenues for the lines of the New England in the East End territory amounted to $12,771.11 and against that revenues were operating expenses, taxes and joint facility rents amounting to $40,870.30, indicating a deficit per month of $28,099.19, or, on an annual basis, of $337,190.

I have prepared a statement of the annual estimated savings that will result from operation of local passenger trains substantially in accordance with the time table set forth in Exhibit A to the Trustees' answer.

(At this point Mr. Filer offered in evidence a tabulation of estimated savings per annum from proposed changes in train service and station elimination in the territory east of Boston Switch, Rhode Island and Blackstone, Massachusetts, separated between Old Colony Railroad, Bos-
[fol. 92] ton & Providence Railroad and other New Haven Railroad lines, which was received without objection and marked Exhibit 12.)

The Witness (continuing): On Exhibit 12 the item "Elimination of Second Track and Signal Stations" is based on the elimination of second track between Canton Junction and North Easton and Cotley Junction and New Bedford. With the elimination of the passenger trains proposed in Schedule A, the second track will no longer be required. A saving in track structure maintenance is brought about by eliminating the necessity for maintaining the track in as smooth an operating condition as is required under passenger train operation. The item relating to reduction in employees' retirement and social security

taxes is based on payrolls. After the present train service has been in effect for a short time, it will then definitely be determined how much of the second track shown in the item of additional elimination of second track can be eliminated. The item "Abandonment of Branch Lines" covers the additional saving that will accrue when and if the Interstate Commerce Commission approves two of the petitions now before that body covering the line from Greenbush to Kingston and from West Hanover to Hanover. With the elimination of the second track and the total elimination or diminution of passenger train service, there is no reason why we cannot go to automatic flasher signals at the various grade crossings.

"Mr. Filer: Mr. Caley, are there any further savings possible through the changes proposed in the time table marked Exhibit A?

The Witness: Yes, sir. The item of train stops at the stations eliminated under this proposed time table total 141,057 stops per year, which if computed at the minimum cost of 34 cents, does not take into consideration the additional amount necessary to start and stop trains on grades [fol. 93] and curves, but it is predicated on level tangent track. A large part, or the majority, of the eighty-eight stations are either on a curve or a grade or both, and therefore the savings shown here are absolutely a minimum.

Mr. Filer: Are there any other items of possible savings?

The Witness: With the institution of the proposed schedule it will be possible to set aside from the east end local service seventeen locomotives, twenty-eight coaches, three combination baggage passenger cars, and three baggage cars, or a total of thirty-four units. Operating expenses will thereby be decreased by $25,767 per year, covering depreciation charged for those units now in service.

Mr. Filer: In addition there will be other savings, will there not, Mr. Caley, which cannot be accurately estimated at the present time?

The Witness: Yes, sir.

Mr. Filer: What would some of those items of savings be?

The Witness: Well, with the elimination of eighty-eight stations it will no longer be necessary to furnish those stations with tariffs, time tables, stationery. It will also mean a reduction in the cost of relief agents, work train handling station coal and supplies, the cleaning of station grounds and approaches, and various small supplies at

stations, stove repairs and various items which at this time we are unable to evaluate, but collectively over a period of a year amount to considerable money.

Mr. Filer: So that the savings which you set forth in Exhibit No. 12 are only the savings which you could estimate very accurately at the present time, and in your opinion there would be a substantial amount of other savings?

The Witness: Yes, sir. That has always followed in previous reductions of this kind.

[fol. 94] Judge Hincks: If the items which you just mentioned are not included in the item shown on Exhibit 12 under maintenance of stations, what sort of items are there included?

The Witness: The item of maintenance covers mainly the repairs to the station structure itself, that is, the building and platforms.

Judge Hincks: How about the heating of the station?

The Witness: The heating of the station, lighting and water has been included in the item shown under station wages and supplies, but in addition to that there are these many small items such as time tables, tariffs, that have not been included in those costs shown above.

Mr. Filer: Mr. Caley, in mentioning these savings you referred to eighty-eight stations.

The Witness: I should have said ninety-three.

Mr. Filer: Ninety-three stations at which all passenger trains would stop if the proposed schedule were made effective?

The Witness: Yes, sir. Eighty-eight in Massachusetts, five in Rhode Island."

(The witness was further examined by Mr. Cutter as follows:)

"Mr. Cutter: I have one question, Mr. Caley. You referred to the release of equipment as eliminating depreciation on the equipment as a charge in the amount of $25,767. With respect to Old Colony Railroad Company, which owns no equipment and is charged in the recommendation with interest on investment in equipment, would there not be an additional savings to Old Colony because it would be relieved of some of that interest?

The Witness: So far as the Old Colony Railroad is concerned, it will mean a reduction in that rental.

Mr. Cutter: That would be true also for the Boston & Providence?

[fol. 95] The Witness: And for the Boston & Providence.

Mr. Cutter: I am not sure that I caught this on your direct, but from your statement as to the general study that ensued, am I correct in my understanding that this testimony of yours has been supported by a great mass of independent individual surveys of stations and operations?

The Witness: Yes, sir.

Mr. Cutter: And these have been checked and rechecked with the appropriate departments of the railroad?

The Witness: They have all had opportunity and have checked and conferred on the exhibits that were introduced by me before the Department of Public Utilities of Massachusetts.

Mr. Cutter: And in your judgment, have they been prepared on a proper basis?

The Witness: Yes, sir."

(No cross examination of the witness.)

Exhibit 13 is a statement prepared by Henry M. Erving, showing the stations to be abandoned in territory east of Providence, Rhode Island, and Blackstone, Massachusetts, with record of average passengers and the miles by highway to the nearest railroad station. This statement shows the 93 stations at which no passenger trains will stop, if local trains are operated on a proposed revised schedule. It shows the number of passengers boarding and leaving trains, and the distance from each station to the nearest station (the mileage is shown by highway but all mileage has been omitted where all passenger train service over a given line is to be discontinued—the lines between Yarmouth and Provincetown on the lower Cape, between North Attleboro and Norwood Central, and similar cases). The first column, showing the Monday-Friday average, means the average per day for the five days.

Exhibit 14, prepared by Charles F. Caley, is a statement of revenues and expenses from ticket sales and cash transfers for the month of October, 1937, at each of the 88 stations, located in Massachusetts.

[fol. 96] STIPULATION

Mr. Shaw: If your Honor please, Mr. Pecce has asked for a stipulation with reference to the proceedings now pending before the Department of Public Utilities, and I should like to read a stipulation to which Mr. Pecce and all counsel present here have consented.

The stipulation is that the Trustees of the Principal Debtor, on December 28, 1937, made application to the Department of Public Utilities for the Commonwealth of Massachusetts for the written approval of said Department to the abandonment of 88 local passenger stations, all of which are located within the Commonwealth of Massachusetts; that the Trustees further seasonably advised the Department of time tables prepared to be made effective March 27, 1938, which contemplated the discontinuance of certain trains and certain rearrangements in train service;

That thereafter on its own motion, the Department entered into an investigation and ordered hearings which were combined with the hearings ordered by the Department on the application of the Trustees relating to the abandonment of the 88 passenger stations;

That hearings on these matters were begun before the Department on February 23, 1938, and have continued from time to time on the following dates: February 23 and 28, March 2, 7, 9, 10, 14, 15, 16, 28, and 30, April 5, 7, and 20, May 2, 4, 9, 16, 17, and 24, and June 16, all in 1938;

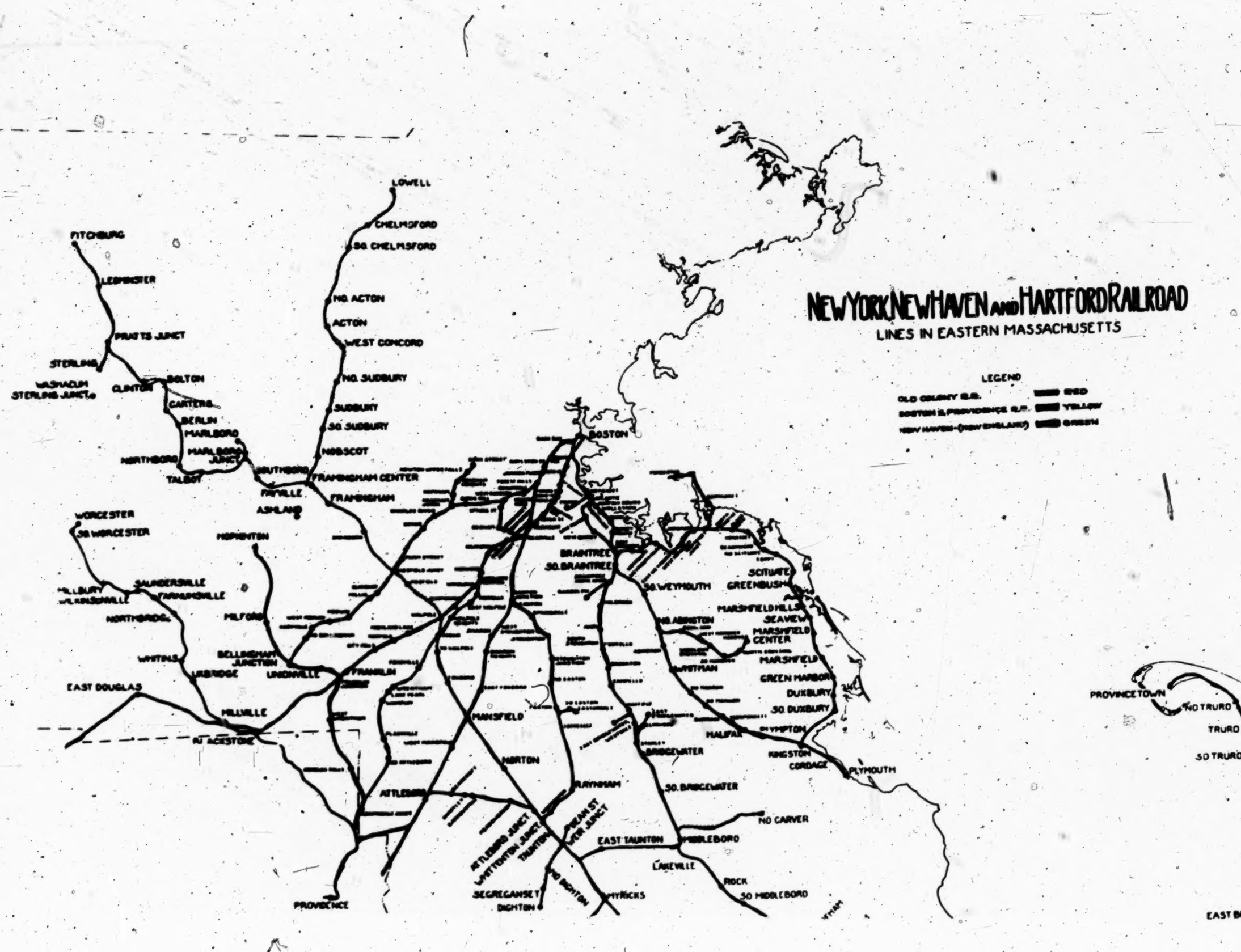
And that those hearings have not been completed and may not be completed for a considerable time in the future;

And that the Department has entered no order upon the application of the Trustees;

And that the matters embraced by the application of the Trustees to the Department are among the matters involved by the Petition for Order No. 289 and the Trustees' Answer thereto now pending before this Court.

Hincks, J.: Very well. Let the stipulation be noted.

(Here follows one photolithograph, side folio 97)


NEW YORK NEW HAVEN AND HARTFORD RAILROAD
LINES IN EASTERN MASSACHUSETTS
LEGEND
OLD COLONY S.S. RED
BOSTON & PROVIDENCE R.R. YELLOW
NEW HAVEN-(NEW ENGLAND) GREEN
LOWELL
CHELMSFORD
SO. CHELMSFORD
NO. ACTON
ACTON
WEST CONCORD
NO. SUDBURY
SUDBURY
SO. SUDBURY
HOBSCOT
FRAMINGHAM CENTER
FRAMINGHAM
FITCHBURG
LEOMINSTER
PRATTS JUNCT
STERLING
WASHACUM STERLING JUNCT.
CLINTON
BOLTON
CARTERS
BERLIN
MARLBORO
MARLBORO JUNCT
NORTHBORO
TALBOT
SOUTHBORO
FAYVILLE
ASHLAND
WORCESTER
SO. WORCESTER
HOPKINTON
MILLBURY
WILKINSONVILLE
SAUNDERSVILLE
FARNUMSVILLE
NORTHBRIDGE
MILFORD
WHITINS
UXBRIDGE
BELLINGHAM JUNCTION
UNIONVILLE
FRANKLIN
EAST DOUGLAS
MILLVILLE
NO. ACESTONE
MANSFIELD
NORTON
ATTLEBORO
ATTLEBORO JUNCT
WHITTENTON JUNCT
TAUNTON
PROVIDENCE
SEGREGANSET
DIGHTON
PEAN ST RIVER JUNCT
NO DIGHTON
WYMOCKS
BOSTON
BRAINTREE
SO. BRAINTREE
SO. WEYMOUTH
SCITUATE
GREENBUSH
MARSHFIELD HILLS
SEAVIEW
NO. ABINGTON
MARSHFIELD CENTER
MARSHFIELD
WESTMAN
GREEN HARBOR
DUXBURY
SO. DUXBURY
HALIFAX
BRIDGEWATER
KINGSTON
CORDAGE
PLYMOUTH
SO. BRIDGEWATER
NO CARVER
EAST TAUNTON
MIDDLEBORO
LAKEVILLE
ROCK
SO. MIDDLEBORO
PROVINCETOWN
NO TRURO
TRURO
SO TRURO

LEGEND

OLD COLONY S.R. — RED

BOSTON & PROVIDENCE R.R. — YELLOW

NEW HAVEN (NEW ENGLAND) — GREEN

CLINTON
BOLTON
CARTERS
BERLIN
MARLBORO
MARLBORO JUNCT
NORTHBORO
TALBOT
SOUTHBORO
FAYVILLE
ASHLAND
NO. SUDBURY
SUDBURY
SO. SUDBURY
NOBSCOT
FRAMINGHAM CENTER
FRAMINGHAM
WORCESTER
SO. WORCESTER
HOPKINTON
BOSTON
BRAINTREE
SO. BRAINTREE
SCITUATE
GREENBUSH
SO. WEYMOUTH
MARSHFIELD HILLS
SEAVIEW
NO. ABINGTON
MARSHFIELD CENTER
MARSHFIELD
HANSON
GREEN HARBOR
DUXBURY
SO. DUXBURY
HALIFAX
PLYMPTON
BRIDGEWATER
KINGSTON
CORDAGE
PLYMOUTH
SAUNDERSVILLE
NORTHBRIDGE
MILFORD
WHITINS
BELLINGHAM JUNCTION
UXBRIDGE
UNIONVILLE
FRANKLIN
ST DOUGLAS
MILLVILLE
RI ACKESTONE
MANSFIELD
NORTON
ATTLEBORO
PLAINVILLE
SO. BRIDGEWATER
NO. CARVER
ATTLEBORO JUNCT
WATTENTON JUNCT
TAUNTON
DEAN ST. WEIR JUNCT
EAST TAUNTON
MIDDLEBORO
LAKEVILLE
ROCK
SO. MIDDLEBORO
PROVIDENCE
SEGREGANSET
DIGHTON
RI DIGHTON
MYRICKS
SOMERSET
ASSONET
TIVERTS
SOMERSET JUNCT
EAST FREETOWN
TREMONT
SO. WAREHAM
WAREHAM CENTER
BUZZARDS BAY
SAGAMORE
SANDWICH
EAST SANDWICH
BOURNE
GRAY GABLES
MONUMENT BEACH
POCASSET
CATAUMET
FALL RIVER
WATUPPA
WESTPORT FACTORY
FERRY ST
BRALEYS
MARION
MATTAPOISETT
NB DARTMOUTH
MT PLEASANT
WELD ST
NEW BEDFORD
N B WHARF
FAIRHAVEN
WEST FALMOUTH
FALMOUTH
WOODS HOLL
BARNSTABLE
WEST BARNSTABLE
HYANNIS
DARTMOUTH
SO DENNIS
BASS RIVER
EAST BREWSTER
BREWSTER
PLEASANT LAKE
HARWICH
NORTH HARWICH
SO CHATHAM
CHATHAM
EASTHAM
NO. EASTHAM
WELLFLEET
SO WELLFLEET
TRURO
SO TRURO
NO TRURO
PROVINCETOWN

[fol. 98]

EXHIBIT 2

Howard S. Palmer, James Lee Loomis, Henry B. Sawyer, Trustees,
The New York, New Haven and Hartford Railroad Company, Debtor,
Old Colony Railroad Company, Debtor

Segregated Revenues and Expenses—Year Ending May 31, 1937

	Old Colony System			
	Old Colony R. R.	Boston & Providence R. R.	P., W. & B. R. R.	Total
Operating Revenues:				
Freight	$4,046,753.58	$3,575,215.45	$56,077.33	$7,678,046.36
Passenger	2,007,787.68	2,635,183.33	51,468.15	4,694,439.16
Other	623,898.19	1,143,052.14	33,453.93	1,800,404.26
Total Operating Revenues	6,678,439.45	7,353,450.92	140,999.41	14,172,889.78
Operating Expenses:				
Maint. of Way & Structures	1,256,961.69	755,410.26	52,333.67	2,064,705.62
Maint. of Equipment	1,629,337.91	1,481,171.91	28,197.25	3,138,707.07
Traffic	111,295.27	122,158.49	2,230.67	235,684.43
Transportation	3,930,003.84	3,504,821.32	158,529.53	7,593,354.69
Miscellaneous Operations	3,348.05	162,405.42	15,849.09	181,602.56
General	383,472.86	333,835.75	13,894.74	731,203.35
Transportation for Inv.—Cr.	* 785.43	* 355.22	.....	* 1,140.65
Total Operating Expenses	7,313,634.19	6,059,447.93	271,034.95	13,944,117.07
Net. Rev. from Ry. Operations	* 635,194.74	994,002.99	* 130,035.54	228,772.71
Railway Tax Accruals	611,628.59	948,376.35	44,195.62	1,604,200.56

* Credit. * Deficit.

77

Exhibit 2—Continued

Howard S. Palmer, James Lee Loomis, Henry B. Sawyer, Trustees,
The New York, New Haven and Hartford Railroad Company, Debtor,
Old Colony Railroad Company, Debtor

Segregated Revenues and Expenses—Year Ending May 31, 1937—Continued

	Old Colony System			
	Old Colony R. R.	Boston & Providence R. R.	P., W. & B. R. R.	Total
Hire of Freight Cars—Dr. Bal	171,413.32	246,284.27	5,303.45	423,001.04
Other Equipment Rents—Net Dr	999.75	25,843.09	.....	26,842.84
Joint Facility Rents—Net Dr.	448,317.89	414,726.05	.....	863,043.94
Net Railway Oper. Income	$ 1,867,554.29	$ 641,226.77	$ 179,534.61	$ 2,688,315.67
Non-Operating Income	153,441.55	162,229.55	9,076.33	324,747.43
Gross Income	$ 1,714,112.74	$ 478,997.22	$ 170,458.28	$ 2,363,568.24
Rent for Leased Road	3,020.36	511,500.00	51,329.17	565,849.53
Other Deductions from Gross Income	126,555.80	145,753.15	-2,346.82	274,655.77
Net Income	$ $1,843,688.90	$ $1,136,250.37	$ $224,134.27	$ $3,204,073.54
Handling Company Coal	$151,887.07	$83,907.24	$1,245.80	$237,040.11
Int. on Inv. in Equipment	158,676.06	176,650.91	6,287.60	341,614.57
Int. on Inv. in Facilities	104,858.43	786,241.17	48,484.50	729,867.24
Leased Line Rent not Accrued	2,504,932.00	.....	22,290.67	2,527,222.67
Amortizing Inc. in Leased Property	974.54	76,574.52	.....	77,549.06

[fol. 99]

Exhibit 3

Segregated Revenues and Expenses—Year 1937

Operating Revenues:				
Freight	$3,713,029.69	$3,405,998.89	$50,792.24	$7,169,820.82
Passenger	2,018,973.51	2,647,936.55	46,388.31	4,713,298.37

Other	617,705.54	1,211,557.09	31,764.26	1,861,026.89
Total Operating Revenues	6,349,708.74	7,265,492.53	128,944.81	13,744,146.08
Operating Expenses:				
Maint. of Way & Structures	1,233,352.02	855,171.49	55,991.72	2,144,515.23
Maint. of Equipment	1,801,231.05	1,615,767.57	28,499.35	3,445,497.97
Traffic	110,199.32	121,466.10	1,980.15	233,645.57
Transportation	3,975,794.74	3,646,217.73	156,417.01	7,778,429.48
Miscellaneous Operations	7,829.64	183,833.75	14,770.50	206,433.89
General	342,257.93	309,158.04	12,168.85	663,584.82
Transportation for Inv.—Cr.	* 607.03	* 238.86	.....	* 845.89
Total Operating Expenses	7,470,057.67	6,731,375.82	269,827.58	14,471,261.07
Net Rev. from Ry. Operations	$ 1,120,348.93	534,116.71	$ 140,882.77	$ 727,114.99
Railway Tax Accruals	618,888.03	972,519.05	43,104.60	1,634,511.68
Hire of Freight Cars—Dr. Bal.	168,049.48	242,522.93	4,943.37	415,515.78
Other Equipment Rents—Net Dr	1,875.75	26,657.12	.....	28,532.87
Joint Facility Rents—Net Dr.	451,700.10	430,665.44	.....	882,365.54
Net Railway Oper. Income	$ 2,360,862.29	$ 1,138,247.83	$ 188,930.74	$ 3,688,040.86
Non-Operating Income	120,038.73	127,859.11	9,122.13	257,019.97
Gross Income	$ 2,240,823.56	$ 1,010,388.72	$ 179,808.61	$ 3,431,020.89
Rent for Leased Road	.....	511,500.01	8,384.26	519,884.27
Other Deductions from Gross Income	79,416.39	146,362.07	2,080.63	227,859.09
Net Income	$ $2,320,239.95	$ $1,668,250.80	$ $190,273.50	$ $4,178,764.25
Handling Company Coal	$147,902.65	$82,240.31	$994.96	$231,137.92
Int. on Inv. in Equipment	150,151.12	175,817.05	6,191.80	332,159.97
Int. on Inv. in Facilities	109,375.68	788,676.47	44,340.19	723,640.98
Leased Line Rent not Accrued	2,507,957.00	.....	65,235.58	2,573,192.58
Amortizing Inv in Leased Property	229.08	72,810.76	.....	73,039.84

* Credit. $ Deficit.

[fol. 100] EXHIBIT 4

Howard S. Palmer, James Lee Loomis, Henry B. Sawyer, Trustees,
The New York, New Haven and Hartford Railroad Company, Debtor,
Old Colony Railroad Company, Debtor

Separation of Segregated Revenues and Expenses between Freight and Passenger Services
Old Colony Railroad—Year 1937

	Freight	Passenger	Total
Operating Revenues:			
Freight	$3,713,029.69	—	$3,713,029.69
Passenger	—	$2,018,973.51	2,018,973.51
Other	116,783.41	500,922.13	617,705.54
Total Operating Revenues	3,829,813.10	2,519,895.64	6,349,708.74
Operating Expenses:			
Maint. of Way & Structures	530,722.05	702,629.97	1,233,352.96
Maint. of Equipment	794,246.05	1,006,985.00	1,801,231.05
Traffic	56,991.38	53,207.94	110,199.32
Transportation	1,602,202.70	2,373,592.04	3,975,794.74
Misc. Operations	—	7,829.64	7,829.64
General	140,137.25	202,120.68	342,257.93
Transp. for Inv.—Cr.	* 604.34	* 2.69	* 607.03
Total Operating Expenses	3,123,695.09	4,346,362.58	7,470,057.67
Net Rev. from Rwy. Operations	706,118.01	$ 1,826,466.94	$ 1,120,348.93
Railway Tax Accruals	258,818.97	360,069.06	618,888.03
Hire of Frt. Cars—Dr. Bal.	168,049.48	—	168,049.48
Other Equip. Rents—Net Dr.	—	1,875.75	1,875.75
Jt. Facility Rents—Net Dr.	3,971.05	447,729.05	451,700.00
Net Railway Operating Income	$275,278.51	$ $2,636,140.80	$ $2,360,862.29

* Credit.
$ Deficit.

[fol. 101] EXHIBIT 6

This exhibit is a book entitled "Survey of Old Colony System Operations".

(Omitted pursuant to stipulation and order.)

EXHIBIT 7

Howard S. Palmer, James Lee Loomis, Henry B. Sawyer, Trustees,
The New York, New Haven and Hartford Railroad Company, Debtor

Estimated Summary of Accounts Covering Administration of the Property of Old Colony Railroad Company for period January 1st to June 30, 1938

	Old Colony	Boston & Providence	Total
Payments under Lease Obligations	None	None	None
Capital Expenditures (Net) Note (1)	$49,140	$1,197	$50,337
Operating Deficits (Note 2)	1,415,329	769,699	2,185,028
Charges for handling Company Coal and Interest on Investment in Equipment and Other Facilities not included in above Operating Deficits	79,609	529,177	608,786
Grand Total	$1,544,078	$1,300,073	$2,844,151

Note (1)—Estimate based on five months actual and June estimated.
Note (2)—Estimate based on three months segregation and three months estimated.

New Haven, Conn.,
July 6, 1938.

EXHIBIT 8

Howard S. Palmer, James Lee Loomis, Henry B. Sawyer, Trustees
The New York, New Haven and Hartford Railroad Company, Debtor
Old Colony Railroad Company, Debtor

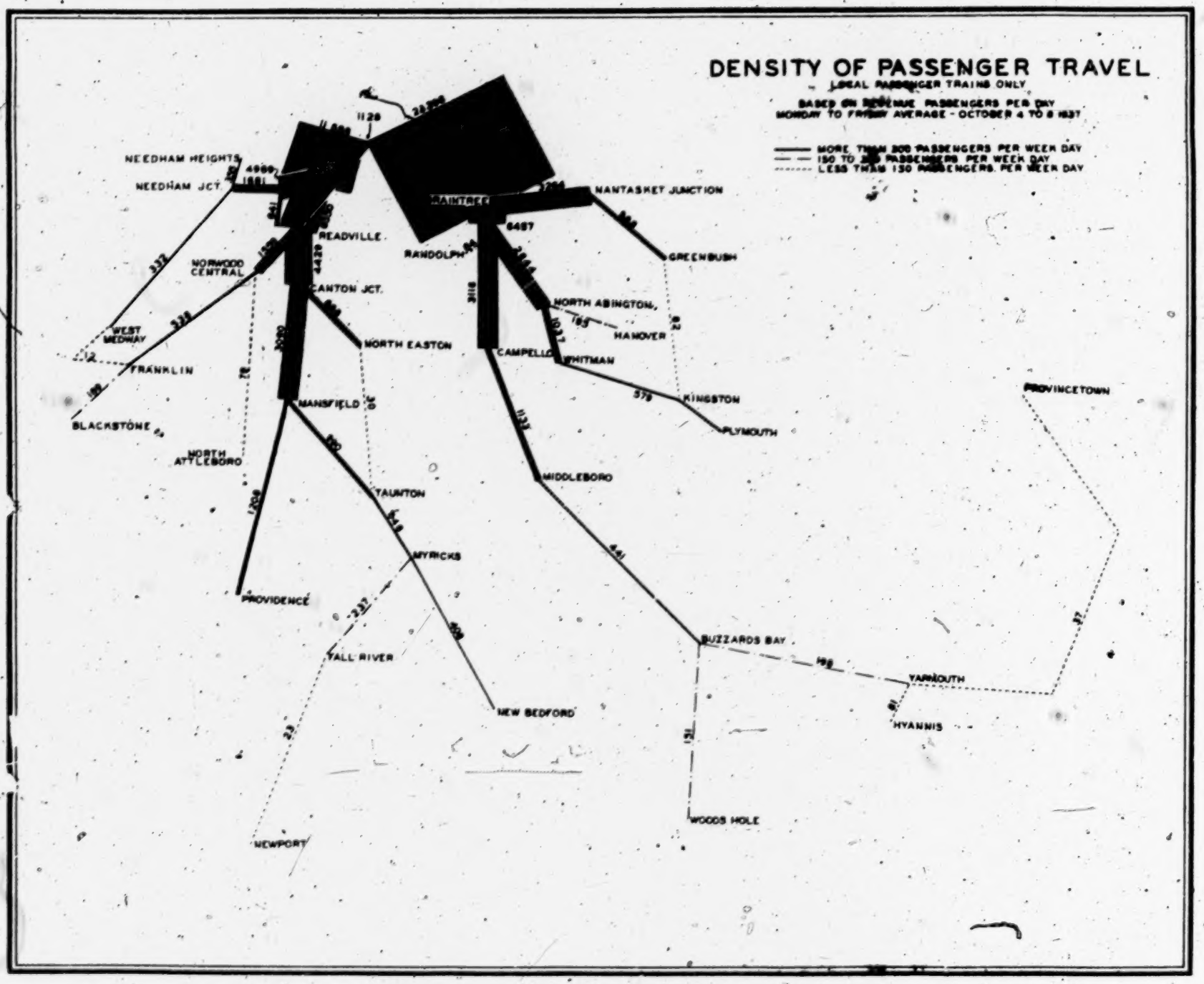
	Massachusetts Passenger Car Registrations (*)		Total Passengers Into and Out of Boston							
			Via Atlantic		Via Back Bay		Via Dorchester		Total	
	Number	Index	Passengers	Index	Passengers	Index	Passengers	Index	Passengers	Index
1917	.....	...	15,789,591	96	10,384,480	81	3,437,830	73	29,611,901	87
1918	.....	..	15,564,203	95	10,433,979	82	3,323,096	70	29,321,278	87
1919	.....	..	16,782,834	103	12,611,567	99	4,850,940	103	34,245,341	101
1920	223,412	100	16,366,203	100	12,798,216	100	4,732,261	100	33,896,680	100
1921	305,471	137	15,915,447	97	11,606,750	91	4,042,659	85	31,564,856	93
1922	325,307	146	15,895,907	97	11,250,408	88	3,645,505	77	30,791,820	91
1923	407,645	183	16,121,408	99	11,031,656	86	3,400,228	72	30,553,292	90
1924	486,952	218	15,679,241	96	9,797,556	77	2,657,774	56	28,134,571	83
1925	554,813	249	14,691,189	90	9,319,491	73	2,274,581	48	26,285,261	78
1926	593,234	266	14,757,005	90	9,308,066	73	2,046,411	43	26,111,482	77
1927	614,359	275	13,900,179	85	8,870,216	69	1,965,198	42	24,735,593	73
1928	637,153	286	12,251,910	75	8,280,277	65	1,603,346	34	22,135,533	65
1929	719,436	322	11,554,643	71	8,193,633	64	1,344,921	28	21,093,197	62
1930	743,288	333	10,654,725	65	7,608,599	59	1,026,241	22	19,289,565	57
1931	736,302	330	9,349,929	57	6,687,679	52	683,716	14	16,721,324	49
1932	698,358	313	8,006,020	49	5,440,460	43	440,590	9	13,887,070	41
1933	689,934	309	7,099,717	43	4,725,405	37	339,076	7	12,164,198	36
1934	686,884	308	7,361,361	45	5,123,925	40	340,319	7	12,825,605	38
1935	684,973	307	7,413,461	45	5,354,702	42	341,919	7	13,110,082	39
1936	714,081	320	7,901,431	48	6,036,415	47	370,709	8	14,308,555	42
1937	.....	....	8,000,724	49	6,297,366	49	407,025	9	14,705,115	43

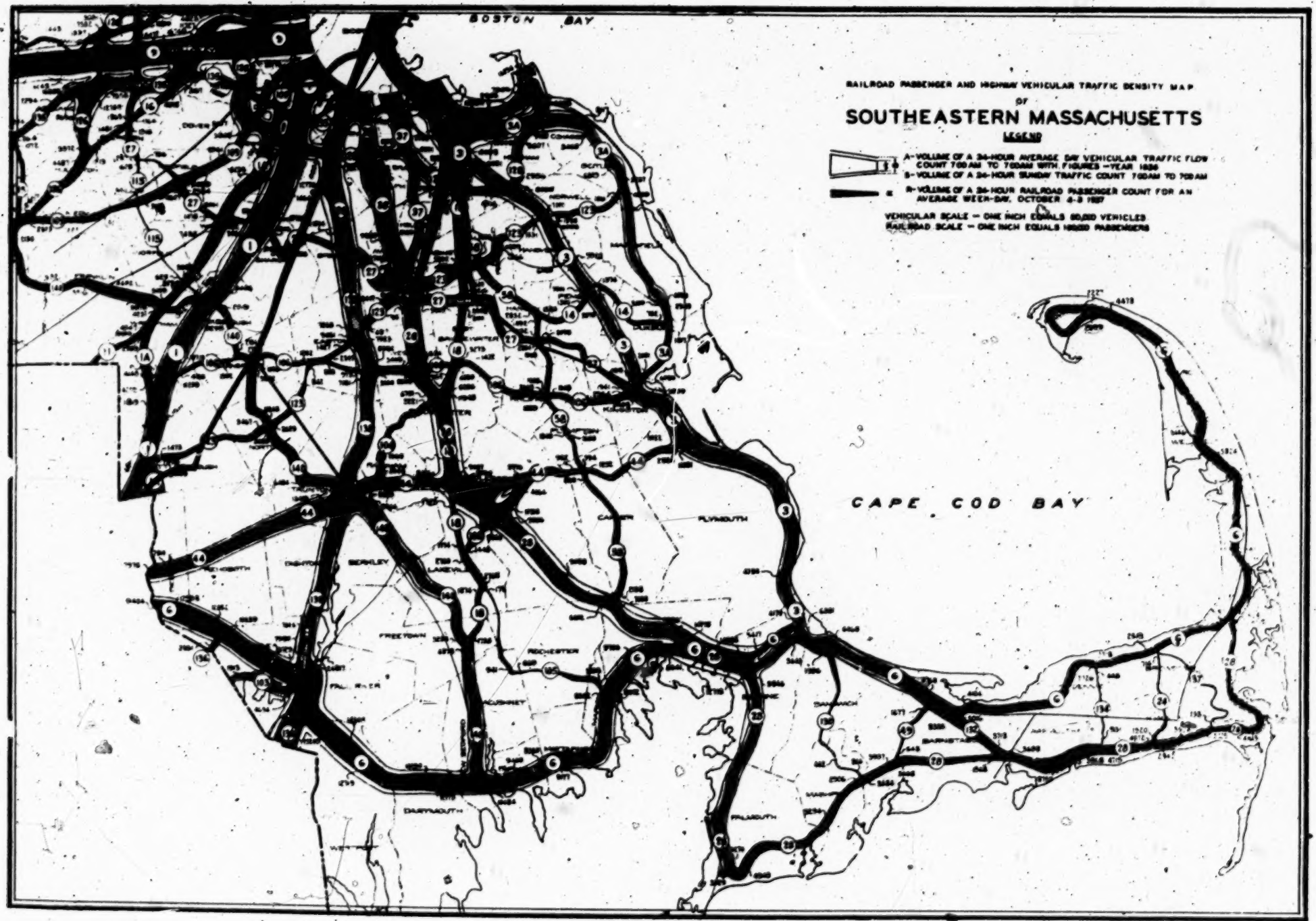
Index—1920 equals 100

(*) Automobile Facts and Figures, published by Automobile Manufacturers Association.

Boston, Massachusetts.
February 21, 1938.

(Here follows two photolithographs, side folios 103 and 104)


DENSITY OF PASSENGER TRAVEL
LOCAL PASSENGER TRAINS ONLY
BASED ON REVENUE PASSENGERS PER DAY
MONDAY TO FRIDAY AVERAGE - OCTOBER 4 TO 8 1937
MORE THAN 300 PASSENGERS PER WEEK DAY
150 TO 300 PASSENGERS PER WEEK DAY
LESS THAN 150 PASSENGERS PER WEEK DAY
NEEDHAM HEIGHTS
NEEDHAM JCT.
READVILLE
NORWOOD CENTRAL
CANTON JCT.
WEST MEDWAY
FRANKLIN
BLACKSTONE
NORTH EASTON
MANSFIELD
NORTH ATTLEBORO
TAUNTON
MYRICKS
PROVIDENCE
FALL RIVER
NEW BEDFORD
NEWPORT
RANDOLPH
BRAINTREE
NANTASKET JUNCTION
GREENBUSH
NORTH ABINGTON
HANOVER
CAMPELLO
WHITMAN
KINGSTON
PLYMOUTH
MIDDLEBORO
BUZZARDS BAY
PROVINCETOWN
YARMOUTH
HYANNIS
WOODS HOLE


BOSTON BAY
RAILROAD PASSENGER AND HIGHWAY VEHICULAR TRAFFIC DENSITY MAP
OF
SOUTHEASTERN MASSACHUSETTS
LEGEND
A- VOLUME OF A 24-HOUR AVERAGE DAY VEHICULAR TRAFFIC FLOW COUNT 7:00 AM TO 7:00AM WITH FIGURES - YEAR 1956
B- VOLUME OF A 24-HOUR SUNDAY TRAFFIC COUNT 7:00AM TO 7:00 AM
R- VOLUME OF A 24-HOUR RAILROAD PASSENGER COUNT FOR AN AVERAGE WEEK-DAY, OCTOBER 4-5 1927
VEHICULAR SCALE - ONE INCH EQUALS 50,000 VEHICLES
RAILROAD SCALE - ONE INCH EQUALS 10,000 PASSENGERS
CAPE COD BAY
PLYMOUTH
BERKLEY
FREETOWN
ROCHESTER
MARION
MATTAPOISETT
DARTMOUTH
FALMOUTH

[fols. 105-106] EXHIBIT 11

Howard S. Palmer, James Lee Loomis, Henry B. Sawyer Trustees,

The New York, New Haven and Hartford Railroad Company, Debtor

Local Passenger Service East of Boston Switch, R. I., and Blackstone, Mass. Revenues and Expenses—Representative Month (October, 1937)

The New York, New Haven and Hartford Railroad Company (New England Railroad)

Passenger Operating Revenues:	
Passenger	$10,802.03
Mail	533.14
Other Head End	513.09
Station	922.85
Total	12,771.11
Passenger Operating Expenses:	
Maintenance of Way & Structures	7,118.36
Maintenance of Equipment	7,968.69
Traffic	228.81
Transportation	20,423.32
General	1,765.04
Total	37,504.22
Taxes	1,551.38
Joint Facility Rents	1,814.70
Total Expenses	40,870.30
Deficit per Month	28,099.19
Or on an annual basis	$337,190.00

[fol. 107] EXHIBIT 12

Howard S. Palmer, James Lee Loomis, Henry B. Sawyer, Trustees,
The New York, New Haven & Hartford Railroad Company, Debtor
Old Colony Railroad Company, Debtor.

Estimated savings per annum from proposed changes in train service and station elimination in territory east of Boston Switch, R. I. and Blackstone, Mass., together with other possible savings, further separated between Old Colony Railroad, Boston & Providence Railroad and other New Haven Railroad lines:

	Old Colony Railroad	Boston & Providence Railroad	Other N. H. Railroad Lines	Total
Crews	$132,247	$58,271	$49,890	$240,408
Train Expense other than Crews	235,199	105,687	52,627	393,513
Maintenance of Stations	7,774	2,220	3,242	13,236
Wages and Supplies at Stations	25,792	6,312	18,242	50,346
Taxes at Stations	1,660	5,528	2,651	9,839
Elimination of Second Track and Signal Stations	23,318	3,182	.....	26,500
Saving in Track and Structure maintenance, passenger and freight versus freight service only	16,051	.....	2,287	18,338
Reduction in Employees Retirement and Social Security Taxes	18,272	8,023	5,444	31,739
Total Annual Savings—Train and Station elimination	460,313	189,223	134,383	783,919
Additional Elimination of second track	39,817	7,768	.....	47,585
Abandonment of Branch Lines	50,425	.....	.....	50,425
Substitution of Flashers for Manual Protection at Highway Grade Crossings	108,344	23,148	.....	131,492
Grand Total—Direct Saving	$658,899	$220,139	$134,383	$1,013,421

[fol. 108] EXHIBIT 13

Howard S. Palmer, James Lee Loomis, Henry B. Sawyer, Trustees
The New York, New Haven and Hartford Railroad Company; Debtor
Old Colony Railroad, Debtor

Stations to be Abandoned in Territory East of Providence, R. I. and Blackstone, Massachusetts, with Record of Average Passengers and the Miles by Highway —— the Nearest Railroad Station.

NOTE.—Miles to nearest railroad station have been omitted in cases where all passenger trains are to be discontinued.

On Lines of Old Colony in Massachusetts

Passengers Mon-Fri Avg. January 1938 On	Off		Miles to the nearest R. R. Station by Highway	Passengers Mon-Fri Avg. January 1938 On	Off		Miles to the nearest R. R. Station by Highway
5.8	.6	Easton	3.7	——	.2	Eastham	
2.2	1.0	Whittenton	2.0	.6	——	North Eastham	
.6	2.2	Ferry Street	1.5	.6	1.0	Rock	5.2
——	.6	Gray Gables	1.3	4.2	4.8	South Middleboro	7.8
.6	.8	Bourne	2.8	1.4	1.4	Tremont	4.7
6.2	7.2	Sagamore	2.7	23.4	5.0	Matfield	2.5
——	——	East Sandwich	2.9	10.8	10.8	Westdale	2.8
——	——	East Freetown	7.9	5.6	6.2	Halifax	2.9
1.0	.4	Weld Street	.7	4.6	4.6	Plympton	4.3

EXHIBIT 13—Continued

Old Lines of Old Colony in Massachusetts—Continued

Passengers Mon-Fri Avg. January 1938 On	Off		Miles to the nearest R. R. Station by Highway	Passengers Mon-Fri Avg. January 1938 On	Off		Miles to the nearest R. R. Station by Highway
——	——	Braleys	7.8	12.8	3.4	Stanley	1.2
7.0	5.4	North Attleboro		——	——	Norton	6.4
4.0	2.4	Plainville		——	——	South Wellfleet	
3.2	1.8	Wampum		1.0	1.0	Wellfleet	
——	——	Lake Pearl		——	——	South Truro	
8.8	6.4	Wrentham		2	——	Truro	
2.6	.2	Pondville		.2	1.0	North Truro	
15.4	3.8	Walpole Heights		3.6	4.8	Providencetown	
9.6	15.8	East Walpole		38.0	27.0	Randolph	
2.8	.8	Morrills		137.8	119.2	East Braintree	.8
——	.2	Bass River		9.6	11.4	West Hingham	.8
.2	.2	South Dennis		5.0	4.8	Nantasket Jct.	1.2
——	.8	North Harwich		8.2	10.8	North Cohasset	2.3
1.6	.6	Harwich		3.4	4.0	Black Rock	1.4
——	.2	Pleasant Lake		15.0	13.8	Beechwood	1.1
1.6	.6	Brewster		1.4	——	North Hanson	2.3
.2	.2	East Brewster		9.8	9.6	Burrage	1.6
2.8	1.4	Orleans					

[fol. 109] On Lines of Old Colony in Rhode Island

.6	.8	Tiverton		.2	.4	Portsmouth	
0.0	0.0	Middletown		8.8	8.0	Newport	
2.2	2.0	Bristol Ferry					

On Lines of Boston and Providence in Massachusetts

40.8	42.4	Spring Street	.5	11.6	9.8	West Stoughton	1.3
21.8	19.2	East Foxboro	2.6	43.0	18.2	Mount Hope	6.3
9.8	10.4	West Mansfield	3.4	33.4	28.4	Forest Hills	5.2
.6	.4	Sharon Heights	1.9	34.8	52.4	Jamaica Plain	4.4
5.0	5.8	Springdale	1.3	61.6	65.6	Boylston Street	3.9

On Lines of New England in Massachusetts

21.0	31.8	Ashcroft	1.1	64.0	94.2	Uphams Corner	
6.0	6.8	City Mills	1.8	35.2	42.0	Charles River	
7.4	4.4	Highland Lake	1.2	51.4	49.2	Dover	
7.6	10.8	Plimptonville	1.8	11.8	10.2	Farm Street	
3.0	5.6	Winslows	.7	34.6	36.8	Medfield Jct.	
36.8	30.8	Fairmount		16.4	20.2	Clicquot	
23.8	25.6	River Street		20.2	20.0	Millis	
13.8	22.6	Blue Hill Ave.		24.6	17.4	Medway	
19.6	26.4	Morton Street		25.8	26.0	West Medway	
63.0	96.0	Dorchester		1.6	2.4	Caryville	
129.4	147.0	Harvard Street		2.0	1.4	North Bellingham	
74.0	101.2	Mt. Bowdoin		1.8	1.8	Bellingham Jct.	
83.4	103.6	Bird Street					

(July 7, 1938)
rka

Exhibit 14

This exhibit is a statement of revenues and expenses from ticket sales and cash transfers for the month of October, 1937, at each of the 88 stations in Massachusetts.

(Omitted pursuant to stipulation and order.)

[fol. 110] In United States District Court

[Title omitted]

Petition for Appeal and Order Allowing Appeal

To the Honorable, the Justice of the United States District Court for the District of Connecticut:

Petition for Appeal from Order Made by the United States District Court for the District of Connecticut

Commonwealth of Massachusetts, Petition:

Your petitioner, the Commonwea-th of Massachusetts respectfully shows:

1. That the New York, New Haven and Hartford Railroad Company and the Old Colony Railroad Company respectively filed petitions in the United States District Court for the District of Connecticut for Reorganization under Section 77 of the Bankruptcy Act; that these petitions were approved by the Court as having been properly filed and trustees were appointed of the respective properties of the said Debtors.

[fol. 111] 2. That while the aforesaid petitions for Reorganization were pending Howard P. Palmer, James Lee Loomis and Henry B. Sawyer acting as trustees of both the New York, New Haven and Hartford Railroad Company and the Old Colony Railroad Company cause to be made certain preliminary studies of the operations of the properties of the Old Colony Railroad Company and the New York, New Haven and Hartford Railroad Company, and believing that certain operating economies could be effected by the abandonment of certain passenger stations and the curtailment of certain passenger service, on the twenty-eighth day of December, 1937, the said trustees made application to the Department of Public Utilities of the Commonwealth of

Massachusetts pursuant to the provisions of the Massachusetts General Laws, Chapter 160, Section 128 for the written approval of the said Department for the abandonment of eighty-eight local passenger stations located within the Commonwealth of Massachusetts; a copy of said list of said stations is hereto annexed, and marked Exhibit "B".

3. That the said Trustees also gave notice to the said Massachusetts Department of Public Utilities of certain proposed changes in time-table schedules to be made effective March 27, 1938, which time-table contemplated the discontinuance of certain trains and certain rearrangements of train service. That thereupon the said Massachusetts Department of Public Utilities, on its own motion, entered into an investigation and ordered hearings which were combined with the hearings ordered by the said Department on the petition of the said trustees relating to the abandonment of eighty-eight passenger stations; that the hearings on these matters were continued from time to time; that approximately twenty such hearings have been had upon said matters. These hearings were held pursuant to the provisions of the Massachusetts General Laws, Chapter 159, [fol. 112] Section 16 and Massachusetts General Laws, Chapter 160, Section 128.

4. That on the twentieth day of June, 1938, the Protective Committee of the Shareholders of Old Colony Railroad Company; the Mutual Savings Bank Group Committee on New Haven Railroad Bonds; and Old Colony Railroad Company, debtor, filed a petition with the District Court of the United States for the District of Connecticut and prayed said Court to issue an order of notice directing the trustees of the New York, New Haven and Hartford Railroad Company and of the Old Colony file with said Court on or before a date designated in said order of Notice a full statement of their recommendations as to the changes and modifications in the passenger service rendered on the lines of Old Colony, and as to any other operating economies on said lines, which said trustees believe can and should be presently put into effect in the interest of preserving the assets of the estate of Old Colony and its ability to serve the best interests of the public; and further prayed that said Court direct said trustees to take all such steps, as after hearings, to the Court shall appear to be desirable and proper, to effect certain economies in the operation of the railroad of the Old Colony.

5. That the trustees of the properties of the New York, New Haven and Hartford Railroad Company, Debtor and of the properties of the Old Colony Railroad Company, Debtor made an answer to the petition of the Mutual Savings Bank Group Committee on New Haven Railroad Bonds, the Protective Committee of the Shareholders of Old Colony Railroad Company and the Old Colony Railroad Company in which the said trustees recommended that certain changes and modifications in the passenger service then rendered on the lines of Old Colony Railroad Company and of New England Railroad Company be made.

[fol. 113] 6. That the Commonwealth of Massachusetts appeared generally by its Assistant Attorney General in opposition to the said petition.

7. That after a hearing was had upon the petition, the Honorable Carroll C. Hincks, District Judge for the District of Connecticut made an order, a copy of which is hereto annexed and marked Exhibit "C".

8. That pursuant to the aforesaid order, the trustees of the properties of the New York, New Haven and Hartford Railroad Company and of the Old Colony Railroad Company, put into effect the train schedules recommended by them, thereby substantially curtailing the passenger service and eliminating all stops at the stations enumerated on Exhibit "B", all of said stations are located within the Commonwealth of Massachusetts, and also eliminating all stops at the stations known as Tiverton, Bristol Ferry, Portsmouth, Middletown and Newport, these passenger stations are located on the lines of the Old Colony Railroad Company in the State of Rhode Island.

9. That the Honorable Carroll C. Hincks, District Judge of the District Court of Connecticut was seasonably informed of the pendency of the petitions presented by the trustees of the properties of the New York, New Haven and Hartford Railroad Company, Debtor, and of the properties of the Old Colony Railroad Company, Debtor, described in paragraphs two and three of this petition; the court was also informed that these petitions involved principally matters of regulation of passenger service within the Commonwealth of Massachusetts and a request was made to said Court for leave to have the said Department of Public Utilities conclude the hearings upon said petitions without the intervention of the Federal Court.

[fol. 114] 10. That the order made by the United States District Court for the District of Connecticut on the ninth day of July 1938 was an unauthorized exercise of judicial power in matters of intra-state regulations of railroad-; that such order constitutes an unwarranted and lawful invasion of the rights and powers vested with the Commonwealth of Massachusetts by its statutes relating to matters of intra-state regulations of railroads.

11. Your petitioner, feeling aggrieved by the order made by the United States District Court of the District of Connecticut and entered on the ninth day of July, 1938 in the above entitled proceedings and believing that there are present substantial grounds for reversal of said order, hereby respectfully prays that this Court grant an appeal from the said order; and further prays that a citation issue directed to all parties in interest and that the transcript of the records, proceedings and necessary evidence in aforesaid proceedings may be transmitted to the United States Circuit Court of Appeals for the Second Circuit for revision in matters of law.

12. That the parties interested in this appeal are the Mutual Savings Bank Group Committee on New Haven Railroad Bonds, Protective Committee of the Shareholders of the Old Colony Railroad Company, Old Colony Railroad Company and the trustees of the properties of the New York, New Haven and Hartford Railroad Company and the Old Colony Railroad Company.

Commonwealth of Massachusetts, Petitioner, Represented by Edward A. Pecce.

[fol. 115] I, Edward A. Pecce, being duly authorized attorney for the Commonwealth of Massachusetts, do hereby make solemn oath that the statements herein contained are true according to the best of my knowledge and belief.

Subscribed and sworn to before me this first day of August, 1938. Edward Grant, Notary Public, Kings County. Kings Co. Clk. No. 310, Reg. No. 447. N. Y. Co. Clk. No. 902, Reg. No. 0.G.553. Commission expires March 30, 1940. (Seal.)

Petition allowed. C. C. Hincks, U. S. D. J.

[fol. 116] EXHIBIT "B", ANNEXED TO PETITION FOR APPEAL

Stations

On Lines of Old Colony in Massachusetts

Easton	East Walpole	Stanley
Whittendon	Morrills	Norton
Ferry Street	Bass River	South Wellfleet
Gray Gables	South Dennis	Wellfleet
Bourne	North Harwich	South Truro
Sagamore	Harwich	Truro
East Sandwich	Pleasant Lake	North Truro
East Freetown	Brewster	Provincetown
Weld Street	East Brewster	Randolph
Brayleys	Orleans	East Braintree
North Attleboro	Eastham	West Hingham
Plainville	North Eastham	Nantasket Junction
Wampum	Rock	North Cohasset
Lake Pearl	South Middleboro	Black Rock
Wrentham	Tremont	Beechwood
Pondville	Matfield	North Hanson
Walpole Heights	Westdale	Burrage
	Halifax	
	Plympton	

On Lines of Boston and Providence in Massachusetts

Spring Street	Sharon Heights	Forest Hills
East Foxboro	Springdale	Jamaica Plain
West Mansfield	West Stoughton	Boylston Street
	Mount Hope	

On Lines of New England in Massachusetts

Ashcroft	Morton Street	Medfield Junction
City Mills	Dorchester	Clicquot
Highland Lake	Harvard Street	Millis
Plimptonville	Mt. Bowdoin	Medway
Winslows	Bird Street	West Medway
Fairmount	Uphams Corner	Caryville
River Street	Charles River	North Bellingham
Blue Hill Avenue	Dover	Bellingham Junction
	Farm Street	

[fol. 117] EXHIBIT "C", ANNEXED TO PETITION FOR APPEAL

Order

And so upon the record herein and upon the conclusions of the court based thereon,

It is Hereby Ordered and Decreed:

1. That the Trustees hereby are directed as promptly as possible to make effective the operating economies recommended by them by publishing and putting into effect schedules substantially those recommended by them and annexed to their answer, marked "Exhibit A", and by discontinuing, in their discretion, stops of passenger trains at the stations listed in Exhibit "B" annexed to their answer, and to continue such schedules in effect until and unless they, in their discretion, determine that changes in schedules are desirable because of seasonal changes in service requirements, because of changed business conditions, or for other reasons.

2. That the Trustees be and hereby are directed to continue to investigate the possibility of further operating economies upon and in connection with the lines of Old Colony and Boston and Providence Railroad Company and to report to this Court their recommendations with respect thereto from time to time.

Dated at New Haven this 9th day of July, 1938.

C. C. Hincks, United States District Judge.

[fol. 118] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS

To the Honorable, the Justice of the United States District Court for the District of Connecticut.

Commonwealth of Massachusetts, Petitioner:

The Commonwealth of Massachusetts in the above entitled cause, files the following Assignment of Errors upon which the said petitioner will rely on the appeal from an order made by the United States District Court for the District of Connecticut on the 9th day of July, 1938:

1. That the United States District Court for the District of Connecticut erred in making the order dated July 9,

1938, directing the Trustees of the properties of the New York, New Haven and Hartford Railroad Company and of the properties of the Old Colony Railroad Company to eliminate all passenger train service at eighty-eight (88) stations located within the Commonwealth of Massachusetts. Such exercise of judicial power is not authorized by law.

[fol. 119] 2. That the United States District Court for the District of Connecticut erred in making the order dated July 9, 1938, directing the Trustees of the properties of the New York, New Haven and Hartford Railroad Company and of the properties of the Old Colony Railroad Company to eliminate all passenger train service at eighty-eight (88) stations located within the Commonwealth of Massachusetts. Such exercise of judicial power constitutes an unlawful invasion of State's Rights vested in your petitioner in matters of intra-state regulations of railroads.

3. That the United States District Court for the District of Connecticut erred in making the order dated July 9, 1938, directing the Trustees of the properties of the New York, New Haven and Hartford Railroad Company and of the properties of the Old Colony Railroad Company to eliminate all passenger train service at eighty-eight (88) stations located within the Commonwealth of Massachusetts. The total elimination of all passenger service at all these stations is tantamount to an abandonment of these stations. Such abandonment is not authorized by law without approval of the Interstate Commerce Commission.

Commonwealth of Massachusetts, Represented by Edward A. Pecce, Assistant Attorney General.

[fols. 120-121] Citation in usual form omitted in printing.

[fol. 122] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the United States District Court for the District of Connecticut:

You are hereby requested to make a transcript of the record to be filed in the United States Circuit Court of Appeals for the Second Circuit, pursuant to an appeal allowed

in the above entitled cause, and to include in such transcript of record the following, to wit:

Statement Under Rule XIII.

Petition for order directing the Trustees of the Principal Debtor and of Old Colony Railroad Company to effect certain operating expenses.

Answer of Trustees of the Principal Debtor and of Old Colony Railroad to petition of Mutual Savings Bank Group Committee on New Haven Railroad Bonds, etc. to effect certain operating expenses.

Exhibits A and B annexed to aforesaid answer.

Order directing Trustees to effect certain operating expenses.

[fol. 123] Appearance of Commonwealth of Massachusetts.

Findings of facts, memorandum of decision and order on petition for Order No. 289.

Petition to stay execution and enforcement of Order No. 289.

Statement of the evidence.

Exhibit 1. Map of New York, New Haven and Hartford R. R. lines in Eastern Massachusetts.

Exhibit 2. Tabulation of segregated revenues and expenses, year ending May 31, 1937, Old Colony System.

Exhibit 3. Tabulations of segregated revenues and expenses, year 1937, Old Colony System.

Exhibit 4. Tabulation: Separation of segregated revenues and expenses between freight and passenger services, Old Colony R. R. year 1937.

Exhibit 7. Tabulation: Estimated summary of accounts covering administration of the property of Old Colony Co. for period January 1, 1938 to June 30, 1938.

Exhibit 8. Tabulation dated February 21, 1938, showing Massachusetts passenger car registration, and total passengers into and out of Boston for the years 1917 through 1937 inclusive.

Exhibit 9. Chart of density of passenger travel, local passenger trains only, based on revenue passengers per day, Monday to Friday average October 4 to 8, 1937.

Exhibit 10. Railroad passenger and highway vehicular traffic density map of Southeastern Mass.

Exhibit 11. Tabulation of local passenger service East of Boston Switch, Rhode Island and Blackstone, Mass., revenue and expenses October, 1937.

Exhibit 12. Tabulation of estimated savings per annum from proposed changes in train service and station elimination in territory east of Boston Switch, R. I. and Blackstone, Mass., together with other possible savings, further separated between Old Colony R. R., Boston & Providence R. R. and other New Haven Railroad lines.

Exhibit 13. Tabulations of stations to be abandoned in territory east of Providence, R. I. and Blackstone, Mass., [fol. 124] with record of average passengers and the miles of highway to the nearest railroad station.

Petition for appeal and order allowing appeal.

Exhibit B, annexed to petition for appeal.

Exhibit C, annexed to petition for appeal.

Assignment of errors.

Citation.

Order of Circuit Court granting leave to appeal.

Appellant's præcipe.

Appellant's petition for extension of time for filing transcript of record.

Order extending return day of citation to October 2, 1938.

Stipulation extending return day of citation to October 31, 1938.

Order extending return day of citation to October 31, 1938.

Stipulation as to exhibits.

Order as to exhibits.

Stipulation as to record.

Clerk's certificate.

Said transcript to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Second Circuit and to be filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Second Circuit in the City of New York on or before the 31st day of October, 1938, pursuant to the order of this Court enlarging and extending said time.

Dated, October 3, 1938.

Commonwealth of Massachusetts, by Paul A. Dever, Attorney General, by Edward O. Proctor, Edward A. Pecce, Attorneys for the Appellant.

Service of the above præcipe accepted and acknowledged this — day of ——, 1938.

—— ——.

[fol. 125] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPELLANT'S PETITION FOR EXTENSION OF TIME FOR FILING TRANSCRIPT OF THE RECORD

To the Honorable, the Justice of the United States District Court for the District of Connecticut:

Commonwealth of Massachusetts, appellant in the above entitled and numbered cause respectfully represents:

1. That this Honorable Court granted an appeal in the above entitled cause.

2. That the citation therein has been made returnable on the second day of September, 1938.

3. That because the transcript of the appeal consists of so many pages of printed matter, your petitioner is unable to have it prepared in time to have the same filed within thirty days from August third, 1938, the date on which the appeal was granted to petitioner herein, appellant in the cause; therefore it is necessary to obtain an [fol. 126] extension of thirty days from the second day of September, 1938, within which time to complete the said record or transcript of appeal.

Wherefore your petitioner and appellant respectfully prays that the return day of the aforesaid citation be extended and that the time for perfecting the appeal be enlarged to thirty days from and after September second, 1938, and for such other and further relief as to this Court may seem just and proper.

Dated, August 19, 1938.

Commonwealth of Massachusetts, by Paul A. Dever, Attorney General, by Edward A. Pecce, Asst. Atty. General.

[fol. 127] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING RETURN DAY OF CITATION TO OCTOBER 2, 1938

For good cause shown, it is hereby ordered that the return day of the citation on the appeal of the Common-

wealth of Massachusetts be and it hereby is extended to and including the second day of October, 1938, and that the time within which Commonwealth of Massachusetts may docket such appeal and file the transcript of the record in the Circuit Court of Appeals for the Second Circuit, is hereby enlarged to the second day of October, 1938.

New Haven, Connecticut, August 26, 1938.

C. C. Hincks, United States District Judge.

[fol. 128] In United States District Court

[Title omitted]

Stipulation Extending Return Day of Citation to October 31, 1938

It is Hereby Stipulated by the parties to this appeal acting by their attorneys and subject to approval of the Court, that the return day of the citation in the above entitled matter be extended and that the time for docketing said case and for perfecting the said appeal be enlarged to and including October 31, 1938.

Dated, September 20, 1938.

Frederick H. Wiggins, Attorney for Bankers Trust Co., Trustee. Root, Clark, Buckner & Ballantine, by S. N. Scott, Attorney for Bank of N. Y. Fred [fol. 129] N. Oliver, Attorney for Mutual Savings Bank Group Committee on New Haven Bonds. Oscar M. Shaw, Attorney for Old Colony Railroad. R. A. Cutter, Attorney for Protective Committee of Shareholders of Old Colony R. R. Co. H. L. Filer, Attorney for Trustees of the Estate of N. Y., N. H. & H. R. R. Co. and of the Estate of Old Colony R. R. Co.

[fol. 130] In United States District Court

[Title omitted]

Order Extending Return Day of Citation to October 31, 1938

By stipulation of all parties to this appeal, and for good cause shown, it is hereby ordered that the return

day of the citation on the appeal of Commonwealth of Massachusetts be and it is hereby extended to and including the thirty-first day of October, 1938, and hat the time within which Commonwealth of Massachuset s may docket such appeal and file the transcript of the record in the Circuit Court of Appeals for the Second Circuit, is hereby enlarged to the thirty-first day of October, 1938.

C. C. Hincks, U. S. District Judge.

New Haven, Conn., September 27, 1938.

[fol. 131] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING RETURN DAY OF CITATION TO NOVEMBER 7, 1938

For good cause shown, it is hereby ordered that the return day of the citation on the appeal of the Commonwealth of Massachusetts be and it hereby is extended to and including the 7th day of November, 1938, and that the time within which Commonwealth of Massachusetts may docket such appeal and file the transcript of the record in the Circuit Court of Appeals for the Second Circuit, is hereby enlarged to the 7th day of November, 1938.

New Haven, Connecticut, October 31, 1938.

C. C. Hincks, United States District Judge.

[fol. 132] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION EXTENDING RETURN DAY OF CITATION TO NOVEMBER 7, 1938

It is Hereby Stipulated by the parties to this appeal acting by their attorneys and subject to approval of the Court, that the return day of the citation in the above entitled matter be extended and that the time for docket-

ing said case and for perfecting the said appeal be enlarged to and including the 7th day of November, 1938.

Dated, October 31, 1938.

Steward H. Jones, Attorney for Bankers Trust Co. Trustees. Stuart N. Scott, Attorney for Bank of N. Y. Fred N. Oliver, Willard P. Scott, Attorneys for Mutual Savings Bank Group Committee on New Haven Bonds. Oscar Shaw, Attorney for Old Colony Railroad. R. A. Cutter, Attorney for Protective Committee of Shareholders of Old Colony R. R. Co. W. W. Meyer, H. L. Filer, Attorneys for Trustees of the Estate of N. Y., N. H. & H. R. R. Co. and of the Estate of Old Colony R. R. Co.

[fol. 133] In United States Circuit Court of Appeals, Second Circuit

Present: Hon. Martin T. Manton, Hon. Learned Hand, Hon. Thomas W. Swan, Circuit Judges.

In the Matter of New York, New Haven & Hartford Railroad Company, Debtor; Commonwealth of Massachusetts, Appellant

Order Granting Leave to Appeal—October 11, 1938

A motion having been made herein by counsel for the appellant for leave to appeal from a certain order of the District Court dated July 9, 1938;

Upon consideration thereof, it is ordered that said motion be and hereby is granted.

Wm. Parkin, Clerk.

[fol. 134] In United States District Court

[Title omitted]

Stipulation as to Exhibits

It is hereby stipulated by the parties of this appeal acting by their attorneys, and subject to approval of the Court, that (1) a true copy of the volume entitled "New

York, New Haven and Hartford Railroad, Segregation of Earnings", referred to in the order of reference on petition for Order 217, (2) Exhibit 6 in these proceedings before the Court—"Survey of Old Colony System Operations", an operating survey of the east end passenger situation, and (3) a true copy of Exhibit 14, the "88 sheets showing statement of revenues and expenses from ticket sales and cash fares for the month of October, 1937 at each of the 88 stations listed in Exhibit B and located in the State of Massachusetts", be produced at the hearing before the United States Circuit Court of Appeals for the Second Circuit as a physical exhibit, without being reprinted, and that three copies thereof be furnished to the Court.

Dated, September 20, 1938.

Frederick H. Wiggins, Attorney for Bankers Trust [fol. 135] Co., Trustee. Root, Clark, Buckner & Ballantine, by S. N. Scott, Attorney for Bank of N. Y. Fred N. Oliver, Attorney for Mutual Savings Bank Group Committee on New Haven Bonds. Oscar M. Shaw, Attorney for Old Colony Railroad. R. A. Cutter, Attorney for Protective Committee of Shareholders of Old Colony R. R. Co. H. L. Filer, Attorney for Trustees of the Estate of N. Y., N. H. & H. R. R. Co. and of the Estate of Old Colony R. R. Co.

[fol. 136] In United States District Court

[Title omitted]

Order as to Exhibits

By stipulation of all parties to this appeal, acting through their attorneys, it is hereby ordered that (1) a true copy of the volume entitled "New York, New Haven and Hartford Railroad, Segregation of Earnings", referred to in the order of reference on petition for Order 217, (2) Exhibit 6 in these proceedings before the Court—"Survey of Old Colony System Operations", an operating survey of the east end passenger situation, and (3) a true copy of Exhibit 14, the "88 sheets showing statement of revenues and expenses from ticket sales and cash fares for the month of October, 1937 at each of the 88 stations listed in

Exhibit B and located in the State of Massachusetts", be produced at the hearing before the United States Circuit Court of Appeals for the Second Circuit as a physical exhibit, without being reprinted, and that three copies thereof be furnished to the Court.

Dated, September 27, 1938.

C. C. Hincks, United States District Judge.

[fol. 137] In United States District Court

[Title omitted]

Stipulation as to Record

It is Hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above entitled matter as agreed upon by the parties.

Dated, November 7, 1938.

Edward O. Proctor and Edward A. Pecce, Assistant Attorneys General for Appellant, Commonwealth of Massachusetts. W. W. Meyer and H. L. Filer, Attorneys for Respondent, Trustees of the Estate of New York, New Haven and Hartford Railroad Company and of the Estate of Old Colony Rail-[fol. 138] road Company. Fred N. Oliver and Willard P. Scott, Attorneys for Respondent, Mutual Savings Bank Group Committee on New Haven Bonds. R. Ammi Cutter, Attorney for Respondent, Protective Committee of Shareholders of Old Colony Railroad Company. Oscar M. Shaw, Attorney for Respondent, Old Colony Railroad Company. Stewart H. Jones, Attorney for Respondent, Bankers Trust Co., Trustee under First and Refunding Mortgage of Principal Debtor. Stuart N. Scott, Attorney for Respondent, Bank of New York, Trustee under The New England Railroad Company Consolidated Mortgage.

[fol. 139] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 140] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1938

Argued Dec. 19, 1938. Decided Jan. 16, 1939

No. 194

MYRON F. CONVERSE et al., Appellees,

v.

COMMONWEALTH OF MASSACHUSETTS, Appellant

In re NEW YORK, NEW HAVEN & HARTFORD R. R. et al.

Appeal from the District Court of the United States for the District of Connecticut

Before L. Hand, Swan, and Augustus N. Hand, Circuit Judges.

Appeal from an order in bankruptcy of the District Court for the District of Connecticut, directing the trustees in reorganization of the Old Colony Railroad and the New York, New Haven & Hartford Railroad, to discontinue passenger service on a part of their lines.

Edward O. Proctor, of Boston Mass., for appellant.

Fred N. Oliver, of New York City, for Converse and others.

E. R. Brumley, of New York City, for trustees of the railroads.

OPINION

L. HAND, Circuit Judge.

This is an appeal from an order in bankruptcy in the joint reorganization under § 77, Bankr. Act, 11 U. S. C. A. § 205, of the Old Colony Railroad and the New York, New Haven & Hartford Railroad, which directed the trustees of these two roads to discontinue stops of passenger trains at some 88 stations in Massachusetts and five in Rhode Island; the greater part of these being stations upon the Old Colony. On December 28, 1937, the trustees of the New Haven applied to the Department of Public Utilities of Massachusetts for leave to abandon the 88 passenger stations in question; the Department entertained the petition and held 21 hearings upon it, beginning on February 23d and ending

June 16th: these had not been completed, and might not be for a considerable time thereafter. The proceeding before us was begun on June 20, 1938, by the petition of a committee of the officers of savings banks which were holders of bonds of the New Haven. The trustees answered this petition and joined in its prayer; the judge directed that notice should be given to all persons interested; and the Commonwealth of Massachusetts appeared, denied the jurisdiction of the judge, and asserted that the only tribunal competent to pass upon the question was its Department of Public Utilities. The judge overruled the objection, took evidence, made findings of fact and conclusions of law, and entered the order appealed from on July 9, 1938. His findings were in substance as follows. Between October 24, 1935 and December 31, 1937, the Old Colony had a total operating deficit of $5,775,650; for the calendar year 1937 this had been $2,360,000—made up of a freight service credit of $275,000 and a passenger service deficit of $2,636,000—and for the first six months of 1938 it was proportionally even greater. Between 1925 and 1935 Massachusetts had greatly increased its expenditures for highways, paralleling every line of the Old Colony; the automobile registration had more than tripled; and the number of passengers carried by rail in and out of Boston had decreased from 29,000,000 to 14,000,000. By eliminating 93 passenger stations—53 on the Old Colony in Massachusetts, five on the Old Colony in Rhode Island, ten on the Boston and Providence and 25 on the New England—and by an appropriate revision of the [fol. 141] remaining passenger schedules, the deficit of the Old Colony could be reduced by nearly $660,000. The suggested operating changes on the Old Colony were impossible without including those on the Boston & Providence and the New England, but that might properly be done because those two roads were also failing to earn their operating expenses, and their deficits would be reduced. The conclusions of law may also be summarized as follows. The reorganization of the Old Colony could not go through without the proposed changes, because no plan could be confirmed unless the probable earnings of the road would adequately cover its fixed charges. The continuation of the passenger service would imperil the power of the Old Colony to keep up the freight service. The passenger service which was to be ended was not indispensible to the community served, though its discontinuance would cause

some inconvenience. The public interest would in the long run be best served by securing the freight service, together with so much of the passenger service as experience had shown to be necessary. The failure to grant the relief asked would result in confiscation.

The Commonwealth does not question the facts found by the judge, and the petitioners and trustees do not dispute that the order must rest upon some power conferred upon a reörganization court. They recognize that the charter of the road is conditioned upon its serving the public; and that the measure of that service rests with the grantor—subject to constitutional limitations—through its Department of Public Utilities. They agree that ordinarily the Department alone would have power to say what service should be abandoned, and that the Interstate Commerce Commission has no such jurisdiction over a line or branch not wholly abandoned. (The Commission has itself several times so decided, on the theory that regulating the service upon a line or branch, is different from abandoning it, and that while Congress might perhaps have conferred upon it the larger power, it has not done so). The trustees rest their case first upon the argument that by § 77 of the Bankruptcy Act Congress intended to provide for the reörganization of an interstate railroad as a whole, and that in subdivision (f), 11 U. S. C. A. § 203 (f), it specifically provided that a plan duly approved should prevail over all state laws and the orders of any state authority. Having so overridden all local authority, it would be absurd to suppose that Congress should be willing to allow all possible plans to be blocked in advance: that which is immune from local interference when it comes into existence, must surely be free to be born. We could feel some force in this argument, if the judge had found that it would defeat any plan which could be devised to let the deficit accumulate during the period while the Department might be considering the case, and while its order, if unfavorable, was being reviewed. But he did not so find: all he said was that no plan could go through which did not cut off the service in question; and that is quite different from saying that an added indebtedness at the rate of $660,000 a year, for what could scarcely be more than a year, would balk all possible plans. That is most unlikely, and if the trustees meant to assert it, they should have proved it. Nothing in the testimony of the expert, Cunning-

ham, went so far; nor did the finding that "the emergency now existing on these lines will not permit of the delay and uncertainty inherent in such a programme."

The trustees next argue that there is really no question for the Department to determine, because the public convenience from continuing the service cannot possibly balance the losses entailed by it. An order which denied leave to abandon would be confiscatory and could not stand. If so, the stake is no more than the losses suffered while the properly constituted authority is considering the cause: these are no doubt serious, but they are inevitable in all inquiries, and certainly do not justify ousting the tribunal, even in favor of a more expeditious one. Possibly, if it refused to act at all, either expressly, or by such delays as showed that it was not proceeding in good faith, the judge might take over the matter himself. Conceivably such a tribunal may abdicate, and its abdication may be taken as an abandonment by the state of the enforcement of the charter conditions. Crawford v. Duluth St. Ry., 7 Cir., 60 F. 2d 212, can be so explained, for the plaintiffs had pleaded that the city council would not entertain their petition to it; though it must be owned that the court did [fol. 142] not put the result on that ground. However that may be, on July 9, 1938, there was as yet no warrant for saying that the Department had so delayed the proceeding before it as to show that it meant to evade any decision. Respect for it, and for the Commonwealth, required that it should be allowed to proceed as in other cases: only a power in substance the equivalent of the power to issue a writ of prohibition could justify prejudging the merits, however plain they may be.

Since there is therefore nothing in the particular situation to justify the order, it can stand only in case the judge in a railway reorganization is in general exempt from state statutes and the orders of state officers which would otherwise regulate and control the action of the corporate officers and shareholders. This the trustees assert, depending upon subdivision (c) (2) of § 77, 11 U. S. C. A. § 205 (c) (2), which provides that the "trustees * * * shall exercise * * * subject to the control of the judge and the jurisdiction of the Commission * * * the power to operate the business of the debtor". This language must be read along with subdivision (c) (6), 11 U. S. C. A. § 205(c) (6), and subdivision (o), 11 U. S. C. A. § 205(o),

of which we need discuss only the second, which says that the "trustees * * * shall determine what lines or portions of lines of railroad * * * if any, shall be abandoned or sold during the pendency of the proceedings in the interest of the debtor's estate and of ultimate reorganization but without unduly or adversely affecting the public interest * * * and upon order of the judge * * * authorizing any such abandonment or sale, but only with the approval and authorization of the Commission * * * the * * * trustees shall * * * carry out * * * such abandonment or sale." The argument, as we understand it, is that since the judge with the Commission's approval may abandon any "lines or portions of lines" over which the Commission has jurisdiction, he may abandon any service without its approval over which it has no jurisdiction: the condition need be fulfilled only where the condition is imposed. We see no justification for so trenching upon the usual powers of a state while the reörganization remains in substance a receivership, as it does before the plan is confirmed. Of course the judge supersedes the corporate officers and the shareholders, and may, through his trustees, exercise all their powers. Again, as to any matters over which Congress has extended its arm through the Interstate Commerce Commission, he may with 's approval do whatever the road and the Commission together might do without consulting the state authorities; the mere pendency of the reörganization does not affect preëxisting powers. But we cannot see why, merely because the road may in the end be reörganized, the judge should be able to dispense with those conditions which the state has imposed upon the grant that alone makes lawful any operation of the road whatever. So to construe the language of subdivisions (c) and (o) is to make him the tribunal to weigh and decide between the conflicting interests of the owners and the public. The notion behind the regulation of public utilities by specially qualified officials is that a judge is not qualified for such duties—at least in the first instance, or until the facts have been sifted and arranged. Assuming that a bankruptcy act might constitutionally go that far, only inescapable language could justify our imputing to Congress the intent to confer so extreme and unnecessarily provocative a power. The powers of trustees in reörganization are, to some degree at any rate, measured by those of receivers in equity (subd. (c) (2), 11 U. S.

C. A. § 205(c) (2)), and it has long been the settled policy of Congress to subject receivers in their management of the properties in their custody to the laws of the states, § 124 Title 28, U. S. Code, 28 U. S. C. A. § 124. In Iowa v. Old Colony Trust Co., 8 Cir., 215 F. 307, L. R. A. 1915A, 549, the court did indeed affirm an order which allowed the road to abandon part of its lines, over the protest of the state and its railroad commission. The statutes of Iowa provided a proceeding in a state court for that purpose and the railroad substituted for this an ancillary petition in a foreclosure suit. We assume that the court allowed the road to do this under the doctrine that, when once a court has taken custody of a res, it will draw to itself all litigation touching it. That doctrine may properly be made to cover all litigation cognizable by state courts, even though it con-[fol. 143] cern the fulfillment of charter conditions. It is of the essence of the jurisdiction for diverse citizenship that federal courts shall be deemed the equivalent of state. But when the state has set up a specialized tribunal, not judicial, at all, the federal court is not a substitute for it, and may not displace it.

Order reversed: petition dismissed.

Swan, Circuit Judge, dissenting with opinion.

[fol. 144] In United States Circuit Court of Appeals for the Second Circuit

[Title omitted]

Dissenting Opinion

Swan, Circuit Judge (dissenting):

With much diffidence I disagree with my associates. The question is merely one of statutory interpretation, for it is conceded that under its power to enact bankruptcy laws Congress may, if it chooses, exclude state authorities from control over the operation of an interstate railroad which is in process of reorganization. In my opinion section 77, 11 U. S. C. A. § 205, indicates the intention of Congress so to do.

Section 77(a), 11 U. S. C. A. § 205(a), provides that after the petition of the railroad company is approved "the court in which such order approving the petition is entered shall,

during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located." Section 77(c) (2), 11 U. S. C. A. § 205(c) (2), gives the debtor's trustee all of the powers of a trustee in bankruptcy and, subject to the control of the judge and the jurisdiction of the Interstate Commerce Commision, "the power to operate the business of the debtor." There are other provisions that also make reference to the Interstate Commerce Commission but none which requires approval to be obtained from any state authority. In this respect section 77, 11 U. S. C. A. § 205, differs significantly from section 77B, 11 U. S. C. A. § 207. The latter expressly provides that if the corporation in reorganization is a utility subject to the jurisdiction of a state regulatory body, the plan of reorganization shall not be confirmed until such state authority has been afforded an opportunity to suggest amendments or objections, subdivision (e) (2), 11 U. S. C. A. § 207 (e) (2); nor shall securities be issued without obtaining the consent of state authorities having jurisdiction over such matters, subdivision (f) (7), 11 U. S. C. A. § 207 (f) (7). In striking contrast to these provisions, section 77 (f), 11 U. S. C. A. § 205(f), provides that upon confirmation of the plan it shall be carried out subject to the supervision of the judge, "the laws of any State or the decision of any State authority to the contrary notwithstanding." Subsection (o), 11 U. S. C. A. § 205 (o), also provides that during the pendency of the proceedings the trustee may present to the judge petitions for authority to sell property of the debtor or to abandon lines or portions of lines of railroads, and the judge may grant authority so to do, but only with the approval of the Interstate Commerce Commission when that is required. To my mind these provisions indicate not only that the putting into effect of a confirmed plan of reorganization is not to be hampered by state regulatory authorities but also that the conduct of the debtor's business prior to confirmation is to be under the exclusive jurisdiction of the district judge, except where resort to the Interstate Commerce [fol. 145] Commission is expressly required. One of the chief reasons for enactment of the statute was to provide a more expeditious method of reorganization than was afforded by the old receivership procedure. Continental Illinois Nat. Bank & Trust Co. v. Chicago Rock Island & P.

Ry. Co., 294 U. S. 648, 685, 55 S. Ct. 595, 79 L. Ed. 1110. If resort to state regulatory bodies were necessary, undesirable delay might well result, as it has in this very case. Nor do I see why control by a state authority should continue up to the date of confirmation, if the confirmed plan may disregard prior orders of the state commission. The district judge has found that no plan could be confirmed unless the proposed reduction of service were made, and that the failure to grant the relief asked would result in confiscation. These findings are not challenged. Hence, enforcement of an order by the state commission refusing the proposed reduction of service could be enjoined. Mississippi Railroad Comm. v. Mobile & Ohio, R. R. Co., 244 U. S. 388, 37 S. Ct. 602, 61 L. Ed. 1216. Under such circumstances, at least, it would seem reasonable to hold that the court of bankruptcy has jurisdiction to protect the res within its custody by curtailing a confiscatory service. In my opinion the order should be affirmed.

The opinion in Re Fonda, J. & G. R. Co., 2 Cir., 95 F. 2d 397, at page 399, contains a discussion of section 77(o), 11 U. S. C. A. § 205 (o), and interprets that section as requiring the trustee to obtain approval of state authorities as well as the Interstate Commerce Commission when a line is abandond. As I was the writer of that opinion, it is appropriate to explain that in that case all parties assumed that resort should be had to the state commission. No such issue was presented and the remarks were obiter. After the benefit of argument and more mature reflection, I now think them incorrect.

[fol. 146] In United States Circuit Court of Appeals, Second Circuit

In the Matter of New York, New Haven & Hartford Railroad Company, Debtor; Commonwealth of Massachusetts, Appellant

Decree—Filed February 4, 1939

Appeal from the District Court of the United States for the District of Connecticut

This cause came on to be heard on the transcript of record from the District Court of the United States for the District of Connecticut, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is reversed with costs and with directions to dismiss the petition.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 147] [File endorsement omitted.]

[fol. 148] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 149] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 27, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 43,170. U. S. Circuit Court of Appeals; Second Circuit. Term No. 685. Howard S. Palmer, James Lee Loomis and Henry B. Sawyer, Trustees, etc., Petitioners, vs. The Commonwealth of Massachusetts. Petition for a writ of certiorari and exhibit thereto. Filed February 17, 1939. Term No. 685, O. T., 1938.

Supreme Court of the United States

October Term, 1938.

No. [redacted]

In the Matter
of
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

Debtor.

HOWARD S. PALMER, JAMES LEE LOOMIS AND HENRY B. SAWYER, TRUSTEES OF THE PROPERTY OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, PRINCIPAL DEBTOR, AND OF OLD COLONY RAILROAD COMPANY, DEBTOR, and

MYRON F. CONVERSE, *et al.*,

Petitioners,

v.

THE COMMONWEALTH OF MASSACHUSETTS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

EDWARD R. BRUMLEY,
FRED N. OLIVER,
Counsel for Petitioners.

WILLARD P. SCOTT,
OSCAR M. SHAW,
R. AMMI CUTTER,
Of Counsel.

THE COURT PRESS, N. Y. C.

SUBJECT INDEX.

	PAGE
Petition for Writ of Certiorari	1
The Opinions of the Courts Below	2
Jurisdiction	2
Statutes Involved	3
Summary Statement of the Matter Involved	3
The Question Presented	7
Specification of Errors	7
Reasons Relied on for the Granting of the Writ.	
1. This case presents an important question of Federal law which has not been, but should be, determined by this Court	8
2. The decision of the Circuit Court of Appeals is in conflict with the decisions of this Court insofar as they have a bearing upon the question here presented and is erroneous	10
3. The decision of the Circuit Court of Appeals in this case is in conflict with the decisions of other Circuit Courts of Appeals	14
APPENDIX A.	
Statutes Involved	17

TABLE OF CASES CITED:

PAGE

Board of Directors St. Francis Levee Dist. v. *Kurn*, 91 F. (2d) 118 cert. den. 302 U. S. 750 16

Board of Directors St. Francis Levee Dist. v. *Kurn*, 98 F. (2d) 394, cert. den. 305 U. S. 16

Central Trust Co. v. *Anderson County*, 268 U. S. 93 ... 10

Connecticut Railway & Light Co. v. *Palmer*, dec. Jan. 3, 1939, 83 L. ed. 268 (adv. op.) 9

Continental Illinois National Bank & Trust Company v. *Chicago, Rock Island & Pacific Railway Co.*, 294 U. S. 648 ..... 9, 11, 12

Crawford v. *Duluth Street Ry. Co.*, 60 F. (2d) 212 .. 14, 15

Ex Parte Baldwin, 291 U. S. 610 ..... 9, 11

Isaacs v. *Hobbs Tie & T. Co.*, 282 U. S. 734 10

Louden v. *Northwestern National Bank*, 298 U. S. 160. 9

Mississippi R. R. Com. v. *Mobile & Ohio R. R. Co.*, 244 U. S. 388 13

Murphy v. *Hofman Co.*, 211 U. S. 562 10

Palmer v. *Palmer*, dec. Jan. 9, 1939, 83 L. ed. 337 (adv. op.) 9

State of Iowa v. *Old Colony Trust Co.*, 215 Fed. 307 .. 14, 15

Tyler, In re, 149 U. S. 164 10

TABLE OF STATUTES CITED:

Bankruptcy Act, §2, Act of July 1, 1898, c. 541, §2, 30 Stat. 545; as amended April 12, 1900, c. 191, §34, 31 Stat. 85; February 5, 1903, c. 487, §1, 32 Stat. 797; March 3, 1909, c. 269, §1, 35 Stat. 838; June 25, 1910, c. 412, §§1, 2, 36 Stat. 838, 839; May 27, 1926, c. 406, §2, 44 Stat. 662; and June 25, 1936, c. 804, 49 Stat. 1921; 11 USCA §11 ..... 9, 19

PAGE

Bankruptcy Act, §77, Act of August 27, 1935, c. 774, 49 Stat. 911, as amended June 26, 1936, c. 833, 49 Stat. 1969; 11 USCA §205, 3, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19

Bankruptcy Act, §77B, Act of June 7, 1934, c. 424, §1, 48 Stat. 912; as amended August 20, 1935, c. 577, 49 Stat. 664; August 29, 1935, c. 809, 49 Stat. 965; and August 12, 1937, c. 589, §1, 50 Stat. 622; 11 USCA 207 13

Judicial Code, §65, Act of March 3, 1887, c. 387, §2, 24 Stat. 554; as amended August 13, 1888, c. 866, §3, 25 Stat. 436; and March 3, 1911, c. 231, §65, 36 Stat. 1104; 28 USCA §124 ..... 9, 20

Judicial Code, §240, sub-div. (a), as amended February 13, 1925, c. 229, §1, 43 Stat. 938; 28 USCA §347 (a) 2

OTHER AUTHORITIES CITED:

Craven & Fuller "The 1935 Amendments of Railroad Bankruptcy Law," 49 Harvard Law Review 1254.. 11

Friendly, "Amendment of the Railroad Reorganization Act," 36 Columbia Law Review 27 11

Interstate Commerce Commission, Annual Report, 1938, pp. 10, 11 16

106 Railway Age 37, 54 9

76 Cong. Rec. (72d Cong. 2d Sess.) pp. 2902, 2908, 2917, 4880, 4884, 4907, 5107, 5117-5136, 5350, 5360 11

79 Cong. Rec. (74th Cong. 1st Sess.) pp. 13302-13309.. 11

Supreme Court of the United States

October Term, 1938.

No.

In the Matter

of

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

Debtor.

HOWARD S. PALMER, JAMES LEE LOOMIS AND HENRY B. SAWYER, TRUSTEES OF THE PROPERTY OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, PRINCIPAL DEBTOR, AND OF OLD COLONY RAILROAD COMPANY, DEBTOR, and

MYRON F. CONVERSE, *et al.*,

Petitioners,

v.

THE COMMONWEALTH OF MASSACHUSETTS,

Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

The petitioners, Howard S. Palmer, *et al.*,[1] Trustees of the property of The New York, New Haven and Hartford Railroad Company (hereinafter called the "New Haven") and of Old Colony Railroad Company (hereinafter called "Old Colony"); Myron F. Con-

[1] Howard S. Palmer, James Lee Loomis and W. M. Daniels were appointed Trustees of The New Haven on November 8, 1935, and Trustees of Old Colony on June 18, 1936. Daniels was succeeded by Henry B. Sawyer on March 10, 1937.

verse, *et al.*[2] as the Mutual Savings Bank Group Committee on New Haven Railroad Bonds, Old Colony Railroad Company, Debtor, and George Peabody Gardner, Jr. *et al.*,[3] as the Protective Committee of the Shareholders of Old Colony Railroad Company, pray that a writ of certiorari issue to review the decree of the Circuit Court of Appeals for the Second Circuit entered in the above cause on February 4, 1939 reversing an order of the District Court of the United States for the District of Connecticut, and respectfully represent:

The Opinions of the Courts Below.

The memorandum of decision of Judge Hincks in the District Court of the United States for the District of Connecticut has not been reported. It is dated July 9, 1938, and appears at pages 28 to 35 of the Record. The majority and dissenting opinions in the Circuit Court of Appeals for the Second Circuit have not yet been reported and appear at pages 141 to 150 of the Record.

Jurisdiction.

1. The jurisdiction of this Court is invoked under Section 240, subdivision (a), of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, section 1, 43 Stat. 938; 28 U. S. C. A. §347 (a).

2. The decree of the Circuit Court of Appeals, entitled Order for Mandate, sought to be reviewed is

[2] Myron F. Converse, Theron A. Appolonio, John W. B. Brand, Robert C. Glazier, Charles F. Mann, Thomas W. Murray, Charles A. Post and George H. Woods.

[3] George Peabody Gardner, Jr., William Dexter, E. Sheldon Stewart, Eugene S. Taliaferro and Alexander Whiteside.

dated February 4, 1939 (R. 151). This decree reverses the order of the District Court and directs that the petition be dismissed.

Statutes Involved.

The statutes involved are set forth in the appendix, *infra*, pages 17 to 20, inclusive.

Summary Statement of the Matter Involved.

The New Haven and Old Colony, as separate corporations, are both in reorganization under Section 77 of the Bankruptcy Act[4] in the District Court for the District of Connecticut. Because operations of Old Colony were resulting in substantial deficits, the New Haven Trustees rejected the long term lease of Old Colony (and its leased line, the Boston & Providence), and since June 3, 1936, have operated the Old Colony for its own account.

Representatives of the security holders of Old Colony, and Old Colony, debtor, filed in the District Court on June 20, 1938, a petition (for Order No. 289, R. 2, 4-12) which recited facts conclusively showing that Old Colony was being operated at substantial losses and that the capital and assets of Old Colony were being consumed by unprofitable local passenger operations which endangered the continuance of all service, were confiscatory to the interests of its creditors and shareholders, and would impede the carrying out of any reorganization of Old Colony (R. 8, 9). The petition prayed that the Court direct the New Haven Trustees to effect economies in Old Colony passenger operations.

[4] Act of August 27, 1935, c. 774, 49 Stat. 911; June 26, 1936, c. 833, 49 Stat. 1969, 11 U. S. C. A. §205.

The petition also recited that at an early date, Old Colony security holders had requested the Trustees to take steps to effect economies in Old Colony operations, that studies had been made, and that the Trustees had applied on December 28, 1937 to the Department of Public Utilities of Massachusetts for written approval of the abandonment of 88 local passenger stations, and had advised the Department of proposed time-table changes which contemplated the discontinuance of certain trains and certain rearrangements in train service, and that the Department had consolidated the two matters for hearings which began February 23, 1938 and had not been concluded at the date of the petition (R. 7).

The answer of the Trustees admitted the necessity of effecting economies and to that end recommended specific changes in operations substantially in accordance with the application pending before the Department of Public Utilities. The Commonwealth of Massachusetts appeared generally in opposition to the petition (R. 2, 3) but filed no answer, did not at any time deny any allegation of the petition or of the Trustees' answer, offered no proof and cross examined no witnesses. At the end of the trial Massachusetts asked for and obtained a stipulation that "these hearings have not been completed and may not be completed for a considerable period of time in the future" and "the department has entered no order upon the application of the Trustees" (R. 96).

It is unnecessary to review in detail the uncontradicted evidence, summarized in Judge Hincks' Findings of Fact and Memorandum of Decision, which together with Order No. 289 (R. 28-35) was entered on July 9, 1938 after two days of hear-

ings. Judge Hincks' principal findings of fact (R. 28-31) were as follows:

1. On account of the operation of the owned and leased lines of Old Colony from October 24, 1935, to December 31, 1937, the Old Colony estate had been charged with $11,789,037 as a lien prior to its mortgage. Of this sum, $5,775,650 represented the deficit in the operation of property *owned* by Old Colony.

2. For 1937 the deficit in net railway operating income of Old Colony's *owned* property was $2,360,862, the freight service resulting in a profit of $275,278 and the passenger service in a deficit of $2,636,140. In 1938 the deficit was increasing at an even greater rate.

3. Highway competition, principally from privately owned automobiles, had caused a substantial and progressive reduction in the passenger traffic of Old Colony.

4. By the elimination of 93 passenger stations, 88 of which were in Massachusetts and by changes in train service, and by other economies that would thereby become possible, the deficit in operations accruing against Old Colony's *owned* properties alone could be reduced by over $658,899 annually.

Upon the whole record, Judge Hincks came to the following conclusions (R. 31-34):

1. The greater part of the reduction in passenger traffic by rail in the affected area is permanent.

2. "The reorganization of the Old Colony cannot be accomplished without the operating changes contemplated * * *.

"* * * For about three years these properties have been operated by the court through its trustees and during that time every practical means of

increasing traffic revenues has received careful consideration. Notwithstanding, it has proved impossible to operate on the basis of present service without a deficit. At the same time, an equal attention to the reduction of operating costs and taxes has proved ineffective to eliminate the deficit. Railroad labor is the largest single item of cost and it is impracticable, if not impossible, to negotiate for lower labor rates upon these lines independently of negotiation on a national scale. The emergency now existing on these lines will not permit of the delay and uncertainty inherent in such a program. Thus the only alternative is the elimination of service which fails to attract sufficient patronage to be self-supporting."

3. "Continuation of passenger service upon the present basis will jeopardize the ability of Old Colony to render freight service which is indispensable to the territory served.

"A privately-owned railroad cannot operate without capital, and Old Colony capital is now being depleted at a rate exceeding $10,000. per day."

4. "The changes sought are in the public interest.

"* * * the public interest in the long run will best be served by a policy which is calculated to protect indispensable freight service and to preserve that portion of the passenger service which is shown by experience to be the more vital rather than a policy which is daily bringing nearer the destruction of the entire enterprise."

5. "Failure to grant the relief sought would result in the confiscation of private property."

By final order, No. 289, dated July 9, 1938 (R. 34, 35) the Judge directed the Trustees "as promptly as possible to make effective the operating economies recommended by them by publishing

and putting into effect schedules substantially those recommended by them and annexed to their answer, * * * and by discontinuing, in their discretion, stops of passenger trains at the stations listed * * *, and to continue such schedules in effect until and unless they, in their discretion, determine that changes in schedules are desirable * * *."

On August 2, 1938 the Commonwealth of Massachusetts appealed on the sole ground that the District Court had no jurisdiction to enter Order No. 289 (R. 118, 119), and the Circuit Court of Appeals for the Second Circuit also allowed an appeal (R. 3). That Court reversed the Order and directed that the petition be dismissed (R. 141-147, 151), Circuit Judge Swan dissenting (R. 148).

The Question Presented.

Whether the bankruptcy court had, by virtue of Section 77 of the Bankruptcy Act or otherwise, power to direct its trustees to discontinue intrastate passenger service, irrespective of authorization by the state regulatory body normally having jurisdiction, where the discontinuance of such service would be necessary to accomplish reorganization under Section 77 and where the continuance of such service would result in losses for the railroad as a whole so great as to be confiscatory.

Specification of Errors.

The Circuit Court of Appeals erred:

1. In holding that the bankruptcy court had no power, either by virtue of Section 77 of the Bankruptcy Act or otherwise, to direct its trustees to discontinue intrastate passenger service, irrespective of

authorization by the state regulatory body normally having jurisdiction, even where the discontinuance of such service would be necessary to accomplish reorganization under Section 77 and where the continuance of such service would result in losses for the railroad as a whole so great as to be confiscatory.

2. In holding that, even where no plan of reorganization can be confirmed unless the proposed reduction of service is made, and the failure to grant the relief would result in confiscation, the bankruptcy court has no jurisdiction to protect the property of the debtor within its custody by curtailing such service.

3. In holding that where a state has set up a specialized tribunal normally having power to regulate intrastate service of railroads, Section 77 of the Bankruptcy Act, especially subdivisions (a), (c)(2), (c)(6), (f), and (o), does not give the bankruptcy court, acting alone, power to order the abandonment of confiscatory local service in cases where the approval of the Interstate Commerce Commission is not required.

4. In reversing the order of the District Court and ordering that the petition be dismissed.

Reasons Relied on for the Granting of the Writ.

The petitioners contend that the writ of certiorari should be granted for the following reasons:

1. *This case presents an important question of Federal law which has not been, but should be, determined by this Court.*

The Circuit Court of Appeals has decided by a divided court that Section 77 of the Bankruptcy Act

does not confer power upon the bankruptcy court to direct the discontinuance, essential to reorganization, of confiscatory local passenger service, to the exclusion of the state regulatory body normally having jurisdiction. This Court has not construed Section 77 in this respect. Of the five cases[5] decided by this Court involving Section 77 only two, *Continental Illinois National Bank & Trust Company* v. *Chicago Rock Island & Pacific Railway Company*, 294 U. S. 648, and *Ex parte Baldwin*, 291 U. S. 610, relate to jurisdiction, but neither deals with the question of the respective fields of jurisdiction of the bankruptcy court and state regulatory bodies.

The decision of the question presented involves construction of various provisions of the lengthy and complicated Section 77 of the Bankruptcy Act, especially subdivision (o), and also of Section 2 of the Bankruptcy Act and Section 65 of the Judicial Code.

The importance of the problem presented is apparent from the fact that approximately 26 per cent.[6] of the railroad mileage of the country is in the process of reorganization under Section 77. The effect of the decision of the Circuit Court of Appeals is to subject the many reorganizations now in progress to the probabilities of unreasonable delays and uncertainty at the hands of state regulatory bodies interested not in preserving instrumentalities of interstate commerce by reorganization under Section 77 but solely in local problems. It is of the utmost importance not only to the railroads undergoing reorganization under that

---

[5] *Continental Illinois National Bank & Trust Co.* v. *Chicago, Rock Island & Pacific Railway Co.*, 294 U. S. 648 (1935); *Ex parte Baldwin*, 291 U. S. 610 (1934); *Lowden* v. *Northwestern National Bank*, 298 U. S. 160 (1936); *Connecticut Railway & Light Co.* v. *Palmer*, dec. Jan. 3, 1939, 83 L. ed. 268 (adv. op.); *Palmer* v. *Palmer*, dec. Jan. 9, 1939, 83 L. ed. 357 (adv. op.).

[6] See 106 Railway Age 37, 54, January 7, 1939.

section and their security holders, but to the public as well, that the respective jurisdiction of bankruptcy courts and state regulatory bodies under these circumstances be settled by this Court.[7]

2. *The decision of the Circuit Court of Appeals is in conflict with the decisions of this Court insofar as they have a bearing upon the question here presented and is erroneous.*

The Circuit Court of Appeals has decided a federal question, involving a conflict of jurisdiction between a bankruptcy court and a state regulatory body, in a way probably in conflict with the decisions of this Court, in so far as they are applicable.

The decision of the Circuit Court of Appeals denies to the bankruptcy court the power to protect property in its custody, a power which this Court has held to exist in cases of equity receivership. *In re Tyler*, 149 U. S. 164, 181 (1893); *Central Trust Co.* v. *Anderson County*, 268 U. S. 93 (1925). As the bankruptcy court has the power of a receivership court by Section 77(a), the broad principle laid down should apply in the case at bar. A similar power was recognized in cases arising under the Bankruptcy Act generally, prior to the enactment of Section 77. *Murphy* v. *Hofman Co.*, 211 U. S. 562 (1909); *Isaacs* v. *Hobbs*

[7] See statement in Annual Report of the Interstate Commerce Commission for 1938, at pp. 10-11:

"Three principal reasons account for the slowness in effectuating reorganizations [under section 77 of the Bankruptcy Act]:

. . . . . .

"(3) In the initial administration of any new law, legal questions arise which hinder progress until they are determined. Time is consequently consumed in the decision of the early cases, and oft-times in subsequent litigation, which is not required once stable precedents have been established."

Tie & T. Co., 282 U. S. 734 (1931). All of these cases proceed upon the fundamental power of the court to protect from invasion the property in its custody.

The broad purpose of Section 77 is shown plainly by its legislative history.[8] That purpose, the promotion and expedition of railroad reorganizations in the widespread financial crisis of the railroad industry, was recognized by this Court in *Continental Illinois National Bank & Trust Company* v. *Chicago, Rock Island & Pacific Railway Company*, 294 U. S. 648, 671, 672, 676, 685, *supra*.

Two decisions of this Court have followed the philosophy and principles involved in the earlier equity and bankruptcy cases. In *Ex parte Baldwin*, 291 U. S. 610, *supra*, this Court sustained the bankruptcy court in the exercise of its exclusive power to determine issues relating to the title and possession of the property of a railroad being reorganized under Section 77. In the *Rock Island case*, 294 U. S. 648, 676, *supra*, this Court said that a proceeding under Section 77 is not an *ordinary* proceeding in bankruptcy but a special proceeding which seeks only to bring about a reorganization. To prevent the attainment of that objective is to defeat the very end, the accomplishment of which is the sole aim of the section. The curtailment of service involved in the instant case was found in substance by the District Court to be a necessary step in the restoration of the earning power of the properties for the purposes of the ultimate confirmation of a plan and reorganization of the properties.

[8] 76 Cong. Rec. (72nd Cong. 2d Sess.) pp. 2902, 2908, 2917, 4880, 4884, 4907, 5107, 5117, 5136, 5350, 5360; 79 Cong. Rec. (74th Cong. 1st Sess.), pp. 13302-13309; Craven and Fuller "The 1935 Amendments of Railroad Bankruptcy Law", 49 Harvard Law Review 1254, 1259; Friendly "Amendment of the Railroad Reorganization Act", 36 Columbia Law Review 27-59.

In the *Rock Island* case it was held that to further the processes of reorganization, a district judge might enjoin the sale of collateral pledged with creditors, even though Section 77 contained no specific provision so authorizing, thus upholding the exercise of a power no more specifically conferred by the statute and no more essential to reorganization than is the exercise by the district judge of the power to enter the order here involved.

These two decisions, while not involving the precise question here presented, show that this Court has consistently adopted a construction of Section 77 sufficiently broad to bring about the fulfillment of its purposes. The Circuit Court of Appeals has here construed Section 77 so narrowly as to defeat these purposes.

The decision of the Circuit Court of Appeals is erroneous. It fails to give due consideration to the findings of Judge Hincks and to the applicable law. In the first place, Judge Hincks concluded that the reorganization of the Old Colony could not be accomplished without the operating changes contemplated (R. 32). On this point Circuit Judge Swan, in his dissent, said that Subsections (f) and (o), together with other provisions of Section 77, indicate "not only that the putting into effect of a confirmed plan of reorganization is not to be hampered by state regulatory authorities but also that the conduct of the debtor's business prior to confirmation is to be under the exclusive jurisdiction of the district judge, except where resort to the Interstate Commerce Commission is expressly required" (R. 149, 150).

In the second place, Judge Hincks concluded that failure to grant the relief sought would result in the confiscation of private property (R. 33). In his dis-

sent Circuit Judge Swan said, "enforcement of an order by the state commission refusing the proposed reduction of service could be enjoined" (R. 150). He cites the case of *Mississippi Railroad Com.* v. *Mobile & Ohio R. R. Co.*, 244 U. S. 388 (1917).

Section 77 provides comprehensively and expressly for the development of a plan of reorganization and for the administration of the estate pending reorganization in such a way as to facilitate the eventual framing and approval of a plan. To this end it grants broad jurisdiction to the bankruptcy court. Section 77, by giving the trustees, subject to the supervision of the bankruptcy court, full power to operate the properties, necessarily contemplates that essential operating changes will be effected promptly, and that the court, acting alone, through trustees, will bring these changes about, except in the case of complete abandonment of rails where approval of the Interstate Commerce Commission is expressly required, as distinguished from a partial abandonment of service.

As Circuit Judge Swan points out in his dissenting opinion (R. 149) there is complete absence of any language (such as is found in Section 77B, enacted the year previous to the 1935 revision of Section 77) requiring recourse to any state regulatory commission. This strongly indicates that Congress intended that no state regulation was to be permitted to impede a reorganization of an interstate railroad.

It is submitted that the principles laid down in the decision of the majority of the Circuit Court of Appeals, if allowed to stand, will defeat the whole purpose of Section 77, and that the dissenting opinion of Circuit Judge Swan correctly states the law applicable to the present case.

3. *The decision of the Circuit Court of Appeals in this case is in conflict with the decisions of other Circuit Courts of Appeals.*

The Circuit Court of Appeals held that the bankruptcy court had no jurisdiction to protect the property of the debtor by curtailing a confiscatory service and that it had no power, by virtue of Section 77 of the Bankruptcy Act or otherwise, to direct the discontinuance of confiscatory local passenger service on lines wholly within a state, but that this power continued to reside in a state regulatory body.

This decision is in conflict with the decision of the Circuit Court of Appeals for the Seventh Circuit in *Crawford* v. *Duluth Street Ry. Co.*, 60 F. (2d) 212 (1932), and with that of the Circuit Court of Appeals for the Eighth Circuit in *State of Iowa* v. *Old Colony Trust Co.*, 215 Fed. 307 (1914). This conflict in respect to a subject of fundamental importance exists in a situation which calls for uniformity and where a decision by this Court will remove the conflict.

In *Crawford* v. *Duluth Street Ry. Co., supra*, the City of Superior and the State of Wisconsin appealed from the district court's order authorizing the abandonment of certain lines of a street railway by its receiver, without further awaiting action by the city council. The receiver had presented a petition for permission to discontinue operations on certain branch lines to the mayor and council who had held public hearings upon the petition but who had neither granted nor denied the petition. The Circuit Court of Appeals for the Seventh Circuit held that the district court could properly authorize the abandonment of service where the losses involved

in such service were so substantial as to endanger the operation of the system. In that case, as in this, the entire system was being operated at a loss, caused by the passenger service on three branch lines and the court recognized that relief was essential and could not be delayed pending possible action by the state regulatory body, otherwise there would be a deprivation of rights under the Constitution.

The majority opinion of the Circuit Court of Appeals in the instant case cites this decision but attempts to distinguish it on the ground that the plaintiff there had pleaded that the city council would not entertain their petition, although admitting that the court in the *Duluth* case did not put the result on that ground.[9] In the instant case the Circuit Court of Appeals denied that the District Judge had power to direct the Trustees to discontinue confiscatory service. *Crawford* v. *Duluth Street Ry. Co.*, *supra*, recognized such power.

State of Iowa v. *Old Colony Trust Co.*, 215 Fed. 307, *supra*, was a suit to foreclose a mortgage, in which the court, on petition of the receivers, directed them to dismantle and abandon a stretch of railroad. The State of Iowa, the railroad commissioners and others appealed. It was urged that under the state statute the district court of the

[9] The only finding of the district court relating to the inaction of the council appears in the record in that case at page 155:

"7. That the Receiver filed a petition with the City of Superior, Wisconsin, on November 5, 1930, for permission to abandon street railway operations and remove the equipment thereof from the branch lines of said system above designated; that the Mayor and Common Council of said City had public hearings upon said petition and had said matter for consideration before its Council meetings, but has not acted upon the same and said petition has neither been granted nor denied."

state was a special tribunal designated for administering the relief sought and the only tribunal authorized to do so. The Circuit Court of Appeals for the Eighth Circuit held that the federal district court had the power to make the order. It is submitted that this decision conflicts with that of the principal case. The distinction suggested in the majority opinion, based on the difference between a court and a specialized regulatory tribunal, is without significance here, since the questions involved are peculiarly appropriate for determination by the bankruptcy court—the tribunal to which Congress entrusted the administration of the reorganization.

The decision below is also in general in conflict with the principles laid down by the Circuit Court of Appeals for the Eighth Circuit in *Board of Directors St. Francis Levee District* v. *Kurn*, 91 F. (2d) 118 (1937), cert. den. 302 U. S. 750 and *Board of Directors St. Francis Levee District* v. *Kurn*, 98 F. (2d) 394 (1938), cert. den. 305 U. S. —, both of which held that the bankruptcy court had full power to protect the property of a railroad in reorganization under Section 77 from process in the state courts to enforce tax liens and full jurisdiction to adjudicate the validity and extent of all state tax claims and liens.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

EDWARD R. BRUMLEY,
FRED N. OLIVER,
Counsel for the Petitioners.

WILLARD P. SCOTT,
OSCAR M. SHAW,
R. AMMI CUTTER,
Of Counsel.

APPENDIX A.

STATUTES INVOLVED.

Section 77(a) of the Bankruptcy Act, 11 U.S.C.A. §205(a) reads in part as follows:

> "* * * If the petition is so approved, the court in which such order is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located, and shall have and may exercise in addition to the powers conferred by this section all the powers, not inconsistent with this section, which a Federal court would have had if it had appointed a receiver in equity of the property of the debtor for any purpose. * * *"

Section 77(c), 11 U.S.C.A. §205 (c) (2) reads in part as follows:

> "* * * The trustee or trustees so appointed, upon filing such bond, shall have all the title and shall exercise, subject to the control of the judge and consistently with the provisions of this section, all of the powers of a trustee appointed pursuant to section 72 or any other section of this title, and, to the extent not inconsistent with this section, if authorized by the judge, the powers of a receiver in an equity proceeding, and, subject to the control of the judge and the jurisdiction of the Commission as provided by chapter 1 of Title 49 as on August 27, 1935, or thereafter amended, the power to operate the business of the debtor. * * *"

Section 77(f), 11 U.S.C.A. §205(f) reads in part as follows:

> "* * * Upon confirmation of the plan, the debtor and any other corporation or corporations organized or to be organized for the purpose of carrying out the plan, shall have full power and authority to, and shall put into effect and carry out the plan and the orders of the judge relative thereto, under and subject to the supervision and the control of the judge, the laws of any State or the decision or order of any State authority to the contrary notwithstanding * * *."

Section 77(j), 11 U.S.C.A. §205(j) reads in part as follows:

> "In addition to the provisions of section 29 of this title for the staying of pending suits against the debtor, the judge may enjoin or stay the commencement or continuation of suits against the debtor until after final decree; and may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree * * *."

Section 77(l), 11 U.S.C.A. §205 (l) reads as follows:

> "In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and its property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed."

Section 77(o), 11 U. S. C. A., §205(o) reads in part as follows:

"The trustee or trustees, from time to time, shall determine what lines or portions of lines of railroad and what other property of the debtor, if any, should be abandoned or sold during the pendency of the proceedings in the interest of the debtor's estate and of ultimate reorganization but without unduly or adversely affecting the public interest, and shall present to the judge petitions, in which other parties in interest may join, for authority to abandon or to sell any such property; and upon order of the judge made after a hearing pursuant to such reasonable notice by publication or otherwise as the judge may direct to parties in interest, authorizing any such abandonment or sale, but only with the approval and authorization of the Commission when required by chapter 1 of Title 49, as amended February 28, 1920, or as it may be hereafter amended, the trustee or trustees shall take all steps and carry out all proceedings necessary for the consummation of any such abandonment or sale in accordance with the order of the judge. Any such order of the judge shall be a final order for the purposes of appeal. The judge may order and decree any sale of property, whether or not incident to an abandonment, under this subsection at public or private sale and subject to or free from liens. * * *"

Section 2 of the Bankruptcy Act, 11 U. S. C. A. §11, reads in part as follows:

"The courts of bankruptcy as defined in the previous chapter, viz., the district courts of the United States in the several States, * * * are made courts of bankruptcy, and are invested,

within their respective territorial limits as established on July 1, 1898, or as they may be thereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms, as they were on July 1, 1898, or may be thereafter held, to * * * (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this title; * * *"

Section 65 of the Judicial Code, 28 U. S. C. A. §124, reads:

"Whenever in any cause pending in any court of the United States there shall be a receiver or manager in possession of any property, such receiver or manager shall manage and operate such property according to the requirements of the valid state laws in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof. Any receiver or manager who shall wilfully violate any provision of this section shall be fined not more than $3,000., or imprisoned not more than one year, or both."

FILE COPY

Office - Supreme Court, U. S.
FILED
SEP 16 1939
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

October Term, 1939.

No. 7.

HOWARD S. PALMER, JAMES LEE LOOMIS and HENRY B. SAWYER, Trustees, etc.,

Petitioners,

vs.

THE COMMONWEALTH OF MASSACHUSETTS.

BRIEF ON BEHALF OF PETITIONERS.

EDWARD R. BRUMLEY,
FRED N. OLIVER,
Counsel for Petitioners.

WILLARD P. SCOTT,
OSCAR M. SHAW,
R. AMMI CUTTER,
SAMUEL W. EARNSHAW,
Of Counsel.

THE COURT PRESS, N. Y. C.

INDEX.

	PAGE
I—Opinions of the Courts Below	1
II—Jurisdiction of This Court	1
III—Statement of the Case	1
IV—Question Presented	9
V—Argument	9
Summary of the Argument	9
POINT I—Under Section 77 the bankruptcy court has the power to direct its trustees to discontinue intrastate passenger service, irrespective of authorization by the state regulatory body normally having jurisdiction, in order to preserve the property of an interstate railroad and to bring about its rehabilitation, so as to make possible the formulation of and to effect a plan of reorganization	10
POINT II—Order No. 289, here under review, was necessary to preserve and prevent waste of the property of an interstate railroad, to bring about its rehabilitation, in order to make possible the formulation of and to effect a plan of reorganization	28
Conclusion	30
Appendix	31

PAGE

American Brake & Shoe Foundry Co. v. I. R. T., 10 Fed. Supp. 512 (D. C. S. D. N. Y. 1935), aff'd without opinion, 76 Fed. 2d 1002, cert. den. 295 U. S. 760 ..... 16, 25

Baldwin, et al. Ex Parte., 291 U. S. 610 ..... 18, 19

Board of Directors St. Francis Levee Dist. v. Kurn, 91 F. (2d) 118 (C. C. A. 8, 1937), cert. den. 302 U. S. 750 ..... 20, 26

Board of Directors St. Francis Levee Dist. v. Kurn, 98 F. (2d) 394 (C. C. A. 8, 1938), cert. den. 305 U. S. 647 ..... 20, 26

Central Trust Co. v. Anderson County, 268 U. S. 94 18

Colorado v. United States, 271 U. S. 153 ..... 16, 23n

Continental Bank v. Rock Island Ry., 294 U. S. 648, 676 ..... 10, 12, 14, 15, 17, 19

Crawford v. Duluth Street Ry. Co., 60 F. (2d) 212 (C. C. A. 7, 1932) 20, 21, 25

Dayton-Goose Creek Ry. v. United States, 263 U. S. 456, 477 ..... 23n

Denver & R. G. W. R. Co., In re, 23 F. Supp. 298 (D. C. Col. 1938) 26

Erie R. Co. v. Tompkins, 304 U. S. 64 26

Fidelity Title & Trust Co. v. Kansas Natural Gas Co., 219 Fed. 614 (D. C. Kansas, 1913) 25

Field v. Kansas City Refining Co., 296 Fed. 800 (C. C. A. 8, 1924); cert. den. 266 U. S. 618; 9 F. (2d) 213, cert. den. 271 U. S. 671 25

Franklin County v. Public Utilities Commission, 107 Ohio. St. 442 (1923) 25

Isaacs v. Hobbs Tie & T. Co., 282 U. S. 734 18

Julian v. Central Trust Co., 193 U. S. 93 25

PAGE

Mississippi Railroad Comm. v. *Mobile & O. R. R. Co.*, 244 U. S. 388 17
Murphy v. *Hofman*, 211 U. S. 562 18

New England Divisions Case, 261 U. S. 184, 189 ..... 23*n*
New York v. *United States*, 257 U. S. 591 16

State of Iowa v. *Old Colony Trust Co.*, 215 Fed. 307 (C. C. A. 8, 1914) 21, 22, 26

Transit Commission v. *United States*, 284 U. S. 360 16
Tyler, In re, 149 U. S. 164 ..... 18, 25

Wabash Railroad v. *Adelbert College*, 208 U. S. 38 18

Table of Statutes

Bankruptcy Act, Sec. 2 ..... 11, 33

Bankruptcy Act, Sec. 77
2, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 22, 24, 25, 26, 28, 29, 30

Bankruptcy Act, Sec. 77(a) 11, 31

Bankruptcy Act, Sec. 77(c)(2) 11, 26, 27, 31

Bankruptcy Act, Sec. 77(c)(6) 31

Bankruptcy Act, Sec. 77(c)(12) 27

Bankruptcy Act, Sec. 77(f) 12, 13, 26, 32

Bankruptcy Act, Sec. 77(j) 32

Bankruptcy Act, Sec. 77(l) 11, 32

Bankruptcy Act, Sec. 77(m) 23

Bankruptcy Act, Sec. 77(o) 12, 33

Bankruptcy Act, Sec. 77B 13

Bankruptcy Act, Sec. 77B(e)(2) 13, 34

Bankruptcy Act, Sec. 77B(f) 13, 35

PAGE

Interstate Commerce Act, as amended 11, 24

Judicial Code, Sec. 65 ..... 24, 25, 26, 35

Judicial Code, Sec. 66 ..... 25, 35

Judicial Code, Sec. 265 ..... 25, 36

Massachusetts General Laws:

(Ter. Ed.), C. 25, Sec. 5 37
" " C. 159, Sec. 16 36
" " C. 160, Sec. 128 36
" " C. 160, Sec. 129 36

Reconstruction Finance Corporation Act, Sec. 5 19

Transportation Act, 1920 ..... 23*n*

OTHER AUTHORITIES CITED

Craven and Fuller "The 1935 Amendments of Railroad Bankruptcy Law" 49 Harvard Law Review 1254 .. 22*n*

Friendly "Amendment of the Railroad Reorganization Act" 36 Columbia Law Review 27 ..... 22*n*

Lowenthal "The Railroad Reorganization Act" 47 Harvard Law Review 18 ..... 22*n*

Simpson "Fifty Years of American Equity" 50 Harvard Law Review 171 ..... 22*n*

United States Constitution, Article I, Section 8, par. 4 ..... 23, 31

76 Congressional Record (72nd Cong., 2d Sess.); 22, 22*n*, 23, 24

79 Congressional Record (74th Cong., 1st Sess.) 22*n*, 23

Supreme Court of the United States

October Term, 1939.

No. 7.

HOWARD S. PALMER, JAMES LEE LOOMIS and HENRY B. SAWYER, Trustees, etc.,

Petitioners,

vs.

THE COMMONWEALTH OF MASSACHUSETTS.

BRIEF ON BEHALF OF PETITIONERS.

I.

Opinions of the Courts Below.

The Memorandum Decision of the District Court (with Findings of Fact and Conclusions) is not reported but is printed in the Record (R. 22-27). The majority and minority opinions of the Circuit Court of Appeals for the Second Circuit are reported in 101 F. (2d) 48 (R. 101-108).

II.

Jurisdiction of This Court.

This Court granted petitioner's application for a writ of certiorari on March 27, 1939 (R. 109) 306 U. S. 627.

III.

Statement of the Case.

In 1893, the New York, New Haven and Hartford Railroad Company leased the properties of Old Colony Railroad Company[1] for a term of 99 years. The lease included the properties of the Boston and Providence Railroad Corporation,[1] which the Old

[1] The Old Colony consists of about 575 miles of railroad principally in the southeastern part of Massachusetts, and the Boston and Providence has 58 miles of line running principally between Boston and Providence (R. 44, 45).

Colony had leased in 1888 (R. 32). On October 23, 1935, the New Haven filed a petition in the United States District Court for the District of Connecticut for reorganization under Section 77 of the Bankruptcy Act[2] which was duly approved (R. 1). Local passenger service in and out of Boston was highly unprofitable and surveys by the Trustees of the New Haven indicated that Old Colony's operations (largely consisting of this local passenger service) were resulting in operating deficits of approximately $2,000,000 per year before rental charges of over $2,500,000 (R. 45). As a result the New Haven Trustees rejected the lease on June 1, 1936, and on June 3 the Old Colony Railroad Company itself filed in the same court a petition for reorganization under Section 77 (R. 32, 45). The District Court thereupon appointed as trustees of the property of Old Colony the same persons who had been appointed trustees of the New Haven's property. Since June, 1936, they have operated the property of Old Colony for its own account (R. 33, 34, 45).

On December 28, 1937, the Trustees applied to the Department of Public Utilities of Massachusetts for its approval of the abandonment of 88 local passenger stations. The Trustees advised the Department of time-tables proposed to be effective March 27, 1938, which contemplated the discontinuance of certain trains and re-arrangements in train service. Hearings were not begun until February 23, 1938. In the District Court, the Commonwealth of Massachusetts asked for and obtained a stipulation on the record that the hearings before the Department had not been completed (as of July 8, 1938), and might not be completed for a considerable time in the future, and that no order had been entered upon the application (R. 76).

---

[2] Act of August 27, 1935, c. 774, 49 Stat. 911; June 26, 1936, c. 833, 49 Stat. 1969, 11 U. S. C. A. s. 205.

History of Proceedings Relating to Order No. 289.

Old Colony, debtor, and representatives[3] of its security holders interested in the formulation of plans of reorganization, filed in the District Court on June 20, 1938, a petition (for Order No. 289, R. 3-9) which recited facts conclusively showing that Old Colony was being operated at substantial losses and that the capital and assets of Old Colony were being consumed by unprofitable local passenger operations which endangered the continuance of all service, were confiscatory to the interests of its creditors and shareholders, and would impede the carrying out of any reorganization of Old Colony (R. 7, 8). The petition prayed that the Court direct the Trustees to effect economies in Old Colony passenger operations, reciting that as early as January 19, 1937, the Old Colony security holders requested the Trustees to institute such economies and referring in detail to the long drawn out proceedings before the Massachusetts Department of Public Utilities (R. 5, 6).

The Trustees filed an answer admitting the necessity of effecting economies and recommending changes in operations substantially in accordance with the application pending before the Department of Public Utilities. The Commonwealth of Massachusetts filed an appearance (R. 22) but did not answer, did not at any time deny any allegation of the petition or of the Trustees' answer, offered no proof, and cross examined no witnesses. "The Commonwealth does not question the facts found by the judge * * *" (R. 103).

After hearings the Court on July 9, 1938, ordered the Trustees "as promptly as possible to make effective" certain operating economies recommended by them (R. 27). These economies were embodied in

[3] The petitioners, also petitioners for the writ of certiorari herein, were Mutual Savings Bank Group Committee on New Haven Railroad Bonds, Protective Committee of the Shareholders of Old Colony Railroad Company, and Old Colony Railroad Company, Debtor (R. 3, 4). It is to be noted that the petition for Order No. 289 was not filed by the Trustees.

schedules in the form of time-table changes, annexed as Exhibit A to the Trustees' answer, affecting service on the lines of Old Colony, Boston and Providence and the so-called New England Railroad.[4] The schedules eliminated all stops at 88 stations in Massachusetts and 5 in Rhode Island (R. 74, 75; Exhibit 13, at R. 84, 85) and by the Order the Trustees were authorized in their discretion to discontinue these stops, totaling 141,057 stops per annum (R. 69-71). All the proposed changes were effected (R. 88, par. 8).

Massachusetts appealed on the sole ground that the District Court had no jurisdiction to enter Order 289 (R. 86-89). The Circuit Court of Appeals reversed the Order in a two to one decision (R. 101-109).

Thereupon the Trustees and the original petitioners filed with this Court a petition for a writ of certiorari which was granted on March 27, 1939 (306 U. S. 627).

The Findings and Conclusions of the District Court.

Judge Hincks' principal findings of fact (R. 23-25) were as follows:

1. On account of the operation of the owned and leased lines of Old Colony from October 24, 1935, to December 31, 1937, the Old Colony estate had been charged with $11,789,037 as a lien prior to its mortgage. Of this sum $5,775,650 represented the deficit in the operation of property *owned* by Old Colony.

2. For 1937 the deficit in net railway operating income of Old Colony's *owned* property was $2,360,862, the freight service resulting in a profit of $275,278 and the passenger service in a deficit of $2,636,140. In 1938 the deficit was increasing at an even greater rate.

---

[4] Lines owned by the New Haven Railroad subject to the lien of the New England Railroad Company Consolidated Mortgage (R. 11, par. 1 (a)).

3. Highway competition, principally from privately owned automobiles, had caused a substantial and progressive reduction in the passenger traffic of Old Colony.

4. By the elimination of 93 passenger stations, 88 of which were in Massachusetts, and by changes in train service, and by other economies that would thereby become possible, the deficit in operations accruing against Old Colony's *owned* properties alone could be reduced by over $658,899 annually.[3]

Upon the whole record, Judge Hincks came to the following conclusions (R. 25-27):

1. The greater part of the reduction in passenger traffic by rail in the affected area is permanent.

2. "The reorganization of the Old Colony cannot be accomplished without the operating changes contemplated * * *

"* * * For about three years these properties have been operated by the court through its trustees and during that time every practical means of increasing traffic revenues has received careful consideration. Notwithstanding, it has proved impossible to operate on the basis of present service without a deficit. At the same time, an equal attention to the reduction of operating costs and taxes has proved ineffective to eliminate the deficit. Railroad labor is the largest single item of cost and it is impracticable, if not impossible, to negotiate for lower labor rates upon these lines independently of negotiation on a national scale. The emergency now existing on these lines will not permit of the delay and uncertainty inherent in such a program. Thus the only alternative is the elimination of service which fails to attract sufficient patronage to be self-supporting."

---

[3] For details as to savings, see *infra*, page 7.

3. "Continuation of passenger service upon the present basis will jeopardize the ability of Old Colony to render freight service which is indispensable to the territory served. A privately-owned railroad cannot operate without capital, and Old Colony capital is now being depleted at a rate exceeding $10,000 per day."

4. "The changes sought are in the public interest.

"* * * the public interest in the long run will best be served by a policy which is calculated to protect indispensable freight service and to preserve that portion of the passenger service which is shown by experience to be the more vital rather than a policy which is daily bringing nearer the destruction of the entire enterprise."

5. "Failure to grant the relief sought would result in the confiscation of private property."

The Evidence Presented at the Hearing.

The findings of fact and conclusions of the District Judge (R. 23-27) are abundantly justified by the evidence, all of which was uncontradicted. The evidence shows that 95% of the passenger traffic handled in southeastern Massachusetts, the territory principally affected by the Order, moves to and from Boston; that between 1929 and 1936, Old Colony lost 57% of that passenger traffic; that this substantial decline was due to highway competition, principally from the privately owned and operated automobile; and that the changed conditions are permanent (R. 54-58, 61, 63, 64).

Accounts prepared according to methods approved by the Interstate Commerce Commission (R. 45) show that Old Colony and Boston & Providence were both incurring substantial operating deficits. For example, Exhibits 2 and 3 (R. 77-79) show that the net

railway operating *deficits* (*i. e.*, operating income before any fixed charges and before certain substantial intra-system charges) were as follows:

	Year Ended May 31, 1937	Calendar Year 1937
Old Colony	$1,867,554	$2,360,862
Boston & Providence	641,227	1,138,248

Tentative figures for the first six months of 1938 show that these ruinous deficits were continuing at an even greater rate (Exhibit 7, R. 80).

These losses were due solely to local passenger service (R. 47). The passenger operating ratio was 172½, or, in other words, operating expenses exceeded $1.70 for every dollar of revenue (R. 48). This depletion of funds seriously affected the cash balance of the New Haven, which it was estimated would be, on October 31, 1938, only $1,182,000, a figure far below the danger point (R. 53, 12, 13). Old Colony itself had no cash balance or other liquid assets (R. 52), and deficits incurred in its operation were advanced from funds of the New Haven, whose Trustees were operating Old Colony for its own account (R. 36, 37, 52).

It was shown by expert testimony that the changes covered by Order No. 289 would effect annual direct savings as follows:

Old Colony (excluding leased lines)	$658,899.
Boston & Providence (leased line)	220,139.
Other New Haven lines	134,385.
Total	$1,013,421.

plus certain direct and indirect savings. The savings accruing to other lines of the New Haven arise from incidental changes necessary on lines of the New Haven that are operated in a manner closely related to local passenger operation on the Old Colony. The changes and economies could not be effected on the Old Colony properties without making such incidental changes (R. 24, Exhibit 12 at R. 84, 72-75, 66).

The problem of these passenger losses had been the subject of careful and thorough consideration over an extended period, and numerous studies and surveys aimed at its solution were made by the Trustees (R. 5, 11, 14-21, 38-44, 45-52; Exhibit 2 at R. 77, 78; Exhibit 3 at R. 78, 79; Exhibits 4 and 7 at R. 80). These studies demonstrated that the proposed changes were reasonable and were the only possible course (R. 49, 58, 59, 69, 70, 26). An emergency existed. As Professor Cunningham testified (R. 64, 65):

> "The operating deficits, without taking into account the segregation study below-the-line items, namely a charge for moving company fuel, and interest charges on value of equipment and facilities belonging to other parts of the system but used in part by the Old Colony—the operating deficit last year was $2,320,000 in round figures. The accrued charges by the New Haven Estate against the Old Colony as of December 31, 1937, was over $11,000,000. These heavy charges and the current deficits which during the first six months of 1938 is approximately 30% more than in 1937. * * *
>
> "* * * The continuing deficits in effect are consuming the Estate of the Old Colony and eventually these prior claims will be in excess of the investment value of the property.
>
> "A real emergency exists which requires immediate and effective corrective action. Such action has already been too long deferred. The Savings Bank Committee recognized the danger a year and a half ago, and urged the Trustees to act at that time. It is my opinion that if these ruinous losses are not substantially reduced, the territory served by the Old Colony Railroad will be faced by the probability of complete abandonment of all rail service, both freight and passenger."

During the period of the hearings before the Department of Public Utilities between February and June, 1938, operating deficits were accumulating at the rate of $15,000 to $16,000 daily (R. 53). Such heavy operating losses constitute the most serious obstacle to successful reorganization of Old Colony (R. 64).

IV.

Question Presented.

Whether the bankruptcy court had, by virtue of Section 77 of the Bankruptcy Act or otherwise, power to direct its trustees to discontinue intrastate passenger service, irrespective of authorization by the state regulatory body normally having jurisdiction, where the discontinuance of such service would be necessary to accomplish reorganization under Section 77 and where the continuance of such service would result in losses for the railroad as a whole so great as to be confiscatory.

V.

Argument.

Summary of the Argument.

POINT I.

Under Section 77 the bankruptcy court has the power to direct its trustees to discontinue intrastate passenger service, irrespective of authorization by the state regulatory body normally having jurisdiction, in order to preserve the property of an interstate railroad and to bring about its rehabilitation, so as to make possible the formulation of and to effect a plan of reorganization.

POINT II.

Order No. 289, here under review, was necessary to preserve and prevent waste of the property of an interstate railroad and to bring about its rehabilitation, in order to make possible the formulation of and to effect a plan of reorganization.

POINT I.

Under Section 77 the bankruptcy court has the power to direct its trustees to discontinue intrastate passenger service, irrespective of authorization by the state regulatory body normally having jurisdiction, in order to preserve the property of an interstate railroad and to bring about its rehabilitation, so as to make possible the formulation of and to effect a plan of reorganization.

The sole purpose of Section 77, enacted in the interest of assuring an adequate national transportation system, is the reorganization of financially embarrassed interstate railroads. *Continental Bank* v. *Rock Island Ry.*, 294 U. S. 648, 676. In order to accomplish this purpose Section 77 contains comprehensive provisions for the administration of the properties and business of the debtor, pending reorganization, and for the development and execution of a plan of reorganization. In order to render Section 77 effective—to attain its sole object of reorganization under a satisfactory plan without undue delay—it is necessary in the course of administration that the property of the debtor in the custody of the court be protected against depletion by the elimination of properties and operations, including intrastate passenger service, which occasion undue loss. The immediate question is whether the court had the power to direct its trustees to discontinue such intrastate passenger service, irrespective of authorization by the state regulatory body normally having jurisdiction. An analysis of the statute makes it clear that the court has this power, particularly when recourse to a state regulatory body would hamper administrative acts necessary to accomplish reorganization. Any other construction is fundamentally unsound.

Power of the Court Under the Provisions of Section 77 for the Operation of the Properties and Business of the Debtor, Pending Reorganization.

Section 77 provides that the operation of the properties and business of the debtor, pending reorganization, shall be carried on by the trustees, subject to two express limitations: control by the judge, and jurisdiction of the Interstate Commerce Commission when and as provided by the Interstate Commerce Act.

Subdivision 77 (a) provides that the court, for the purposes of the Section, shall have *exclusive jurisdiction* of the debtor and its property, and the power of a Federal court if it had appointed a receiver in equity of the property of the debtor. It, therefore, contemplates prompt action by the court acting alone, exclusive of any state regulatory body, in order to attain reorganization of the debtor.

Subdivision 77 (c) (2) gives the judge control of the trustees in the exercise of their powers as bankruptcy trustees, authority over them in the exercise of their powers as receivers in an equity proceeding and, subject only to the jurisdiction of the Interstate Commerce Commission, control of them in the exercise of their power to operate the business of the debtor. The broad grant of power to the trustees involves an equally broad grant of control by the court, subject to the jurisdiction of the Interstate Commerce Commission. It makes no reference to any state laws or state regulatory bodies as limiting the grant. The express inclusion of but two limitations upon the power of the trustees to operate the business, control by the judge and jurisdiction of the Commission, impliedly excludes any other limitation.

Under subdivision 77 (l) the jurisdiction and powers of the court are the same as if a voluntary petition for adjudication had been filed and a decree entered. By Section 2 of the Bankruptcy Act, courts

of bankruptcy are vested "with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings * * * to make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this act". *Continental Bank* v. *Rock Island Railway, supra*, 294 U. S. 648. Whether in a bankruptcy or an equity receivership proceeding, the court must have the power to protect from invasion and waste the property in its custody.

Subdivision (o) is an express grant of power to the judge to authorize the abandonment or sale of property, subject only to approval of the Interstate Commerce Commission if total abandonment is involved. If a judge may authorize the total abandonment of a railroad, with the approval of the Commission, the judge alone may order partial discontinuance of service, no jurisdiction being expressly reserved to the Commission or any other regulatory body.

Power of the Court Under the Provisions of Section 77 to Carry Out a Confirmed Plan.

The court is also given complete power to accomplish the paramount purpose of the Act of effecting reorganization by the provisions of subdivision (f), which reads in part:

> "Upon confirmation of the plan, the debtor and any other corporation or corporations organized for the purpose of carrying out the plan, shall have full power and authority to, and shall put into effect and carry out the plan and the orders of the judge relative thereto, under and subject to the supervision and control of the judge, *the laws of any State or the decision or order of any State authority to the contrary notwithstanding.*" (Italics supplied throughout brief.)

Section 77 B is significantly different. We quote from the dissenting opinion of Judge Swan in this connection, referring to Section 77 B:

> "The latter expressly provides that if the corporation in reorganization is a utility subject to the jurisdiction of a state regulatory body, the plan of reorganization shall not be confirmed until such state authority has been afforded an opportunity to suggest amendments or objections, subdivision (e) (2), 11 U. S. C. A. §207 (e) (2); nor shall securities be issued without obtaining the consent of state authorities having jurisdiction over such matters, subdivision (f) (7), 11 U. S. C. A. §207 (f) (7). In striking contrast to these provisions, Section 77 (f), 11 U. S. C. A. §205 (f) provides that upon confirmation of the plan it shall be carried out subject to the supervision of the judge, 'the laws of any State or the decision of any State authority to the contrary notwithstanding'" (R. 107).

Judge Swan further says:

> "Nor do I see why control of a State authority should continue up to the date of confirmation, if the confirmed plan may disregard prior orders of the state 'commission'" (R. 108).

Judge Hincks concluded that reorganization of Old Colony could not be accomplished without the proposed operating changes (R. 25), and failure to grant the relief sought would result in the confiscation of private property (R. 26). The majority opinion of the Circuit Court of Appeals held in substance that, in the absence of a finding that it would ultimately defeat any plan to let the deficit accumulate during the period which the Department of Public Utilities might be considering the case, and while its order, if unfavorable, was being reviewed, there was no force

in the argument that "that which is immune from local interference when it comes into existence, must surely be free to be born" (R. 103). It is difficult to reconcile this with *Continental Bank* v. *Rock Island Railway, supra,* 294 U. S. 648, where the District Court granted an injunction restraining secured creditors of a railway from selling collateral which they held as pledgees and where this Court approved the injunction on the ground that sales of collateral might embarrass the formulation and consummation of a plan, although a plan was not yet in the course of preparation.

The majority opinion of the Circuit Court of Appeals rests upon an artificial distinction between state law and regulation with respect to a confirmed plan, and state law and regulation with respect to the administration of the debtor's estate in such a manner as to make possible the preparation and consummation of a plan. The distinction is artificial because it disregards the fact that the reorganization of a financially embarrassed railroad is not the act of a moment. Reorganization depends upon the creation of a sound operating basis for the properties. State law should exert no greater influence upon the administrative steps essential to the formulation of a plan than upon the execution of the plan itself. Administration and ultimate reorganization are closely related, are interdependent. It would be hard to say, for instance, that the administrative charges against the Old Colony for the period October 23, 1935, to December 31, 1937, of some $11,000,000 (see R. 65), largely made up of its own operating deficits and of those of its leased lines, would not defeat reorganization. On the other hand, a step which would reduce the annual deficits by $658,899 a year would tend to accelerate reorganization.

In the *Rock Island* case, *supra,* involving rearrangement of the capital structure, this Court approved the prevention by court injunction of outside interference. In the case at bar, involving rehabili-

tation of the properties, the necessities for action by the court are even greater. We submit, therefore, that the distinction is not only artificial but unsound in principle.

The court not only has jurisdiction to protect the property within the period of administration but also the duty to expedite the proceedings for the sake of reorganization. As the Supreme Court said in the *Rock Island* case, *supra* (p. 685):

> "The delay and expense incident to railroad receiverships and foreclosure sales constituted, probably, the chief reasons which induced the passage of §77; and to permit the perpetuation of either of these evils under this new legislation would be subversive of the spirit in which it was conceived and adopted. Not only are those who institute the proceeding and those who carry it forward bound to exercise the highest degree of diligence, but it is the duty of the court and of the Interstate Commerce Commission to see that they do. Proceedings of this character, involving public and private interests of such magnitude, should, so far as practicable, be given the right of way both by the court and by the commission, to the end that they may be speedily determined."

This language is especially applicable to delays occasioned by resort to state commissions. If a state commission acts without diligence and speed, it can force delay on the parties and the court and even prevent reorganization.

It will be seen from an examination of Section 77, which constitutes an exercise of the bankruptcy and interstate commerce powers under the Federal Constitution, that there is a complete absence of any pro-

vision for any compliance by the court or its trustees with provisions of state law or with regulations and orders of state regulatory bodies, while the court is engaged in rehabilitating and reorganizing a financially embarrassed interstate railroad. It does not reserve jurisdiction to any state regulatory body with respect to the administration of a debtor's estate or the consummation of a plan. This is not only significant but natural. The problem confronting the Congress when in 1933 it enacted, and in 1935 revised, Section 77 was to provide comprehensively for the speedy and effective restoration of such interstate railroads as useful agencies of interstate commerce. The interstate aspects of such railroads were the important considerations and there was every reason that the Congress should occupy the whole field and legislate without regard to the varying restrictions that the different laws of 48 states might place upon the doing of an adequate, prompt and efficient task of rehabilitation of these interstate agencies. When Congress occupies the field it precludes all inconsistent state regulation, unless specific reservations of state powers are made. *Colorado* v. *United States*, 271 U. S. 153, pages 162-166; *Transit Commission* v. *United States*, 284 U. S. 360; and see *New York* v. *United States*, 257 U. S. 591. The language of Judge Mack in *American Brake & Shoe Foundry Co.* v. *I. R. T.*, 10 Fed. Supp. 512 (D. C. S. D. N. Y. 1935), aff'd without opinion 76 Fed. 2d 1002, cert. den. 295 U. S. 760, is apposite:

> "* * * the question here * * * is in effect, whether the federal court, having already entered upon the administration of an estate, which task it must eventually complete, should remit to the state courts what are important intermediate steps in the administration of that estate * * *" (pp. 521-522).

The dissenting opinion in the Circuit Court of Appeals correctly states the construction of Section 77 on the point involved in this case:

> "To my mind these provisions indicate not only that the putting into effect of a confirmed plan of reorganization is not to be hampered by state regulatory authorities but also that the conduct of the debtor's business prior to confirmation is to be under the exclusive jurisdiction of the district judge, except where resort to the Interstate Commerce Commission is expressly required. One of the chief reasons for enactment of the statute was to provide a more expeditious method of reorganization than was afforded by the old receivership procedure. Continental Illinois Nat. Bank & Trust Co. v. Chicago Rock Island & P. Ry. Co., 294 U. S. 648, 685. If resort to state regulatory bodies were necessary, undesirable delay might well result, as it has in this very case. Nor do I see why control by a state authority should continue up to the date of confirmation, if the confirmed plan may disregard prior orders of the state commission. The district judge has found that no plan could be confirmed unless the proposed reduction of service were made, and that the failure to grant the relief asked would result in confiscation. These findings are not challenged. Hence, enforcement of an order by the state commission refusing the proposed reduction of service could be enjoined. Mississippi Railroad Comm. v. Mobile & Ohio R. R. Co., 244 U. S. 388. Under such circumstances, at least, it would seem reasonable to hold that the court of bankruptcy has jurisdiction to protect the res within its custody by curtailing a confiscatory service" (R. 107-108).

The Power of the Court as Established by the Cases.

The decision of the Circuit Court of Appeals in the case at bar denies to the bankruptcy court the power to protect property in its custody, a power which this Court has long held to exist in cases of equity receivership.

> *In re Tyler*, 149 U. S. 164 (property in possession of receiver not subject to seizure to enforce collection of state tax);
>
> *Wabash Railroad* v. *Adelbert College*, 208 U. S. 38 (state decree to sell bonds invalid);
>
> *Central Trust Co.* v. *Anderson County*, 268 U. S. 94 (federal court can disregard prior state decree as to location and maintenance of certain railroad property in custody of receiver).

Furthermore, the same power was recognized in cases arising under the Bankruptcy Act generally, prior to the enactment of Section 77. *Murphy* v. *Hofman Co.*, 211 U. S. 562; *Isaacs* v. *Hobbs Tie & T. Co.*, 282 U. S. 734. All of these cases proceeded upon the fundamental power of the court to protect from invasion the property in its custody.

Two decisions of this Court under Section 77 have followed the philosophy and principles involved in the earlier equity and bankruptcy cases.

In *Ex parte Baldwin, et al.*, 291 U. S. 610, this Court held that the bankruptcy court had exclusive jurisdiction to prevent interference with property in its custody. Mr. Justice Brandeis said that a court of bankruptcy may issue an injunction to protect its jurisdiction from interference, that the power was not peculiar to bankruptcy courts but an applica-

tion of the general principle that where a court of competent jurisdiction has taken property into its possession the property is withdrawn from the jurisdiction of other courts. "Having possession * * * the court * * * is entitled to determine all questions respecting the same" (p. 615).

It was held in *Continental Bank* v. *Rock Island Railway, supra*, 294 U. S. 648, that the district court could grant an injunction pursuant to Section 77 restraining secured creditors of a railroad in the process of reorganization from selling collateral which they held as pledgees. It was urged that Section 77 gave no express or implied power to grant the order (the same line of argument advanced here by the respondent), that it could not be granted in ordinary bankruptcy proceedings, and that the Reconstruction Finance Corporation Act (47 Stat. 5, c. 8, §5) expressly empowered the Reconstruction Finance Corporation to liquidate the collateral. But this Court said that Section 77 seeks to bring about a reorganization, if a satisfactory plan can be devised (p. 676); that the power to enjoin the sale is found in the object of Section 77—"to bring about a reorganization" (p. 676); and that although no plan was even in the course of preparation, sales of collateral would have embarrassed the formulation and consummation of a plan, and might have changed its detail (pp. 678, 679, 685). "And to prevent the attainment of that object is to defeat the very end the accomplishment of which was the sole aim of the section, and thereby to render its provisions futile" (p. 676).

These two decisions, while not involving the precise question here presented, show that this Court has adopted a construction of Section 77 sufficiently broad to bring about the fulfillment of its objects. The Circuit Court of Appeals has here construed Section 77 so narrowly as to defeat these purposes.

The Circuit Court of Appeals for the Eighth Circuit also has held in *Board of Directors St. Francis Levee Dist.* v. *Kurn*, 91 F. (2d) 118 (1937), cert. den. 302 U. S. 750; and *Board of Directors St. Francis Levee Dist.* v. *Kurn*, 98 F. (2d) 394 (1938), cert. den. 305 U. S. 647, that the bankruptcy court had full power to protect the property of a railroad in reorganization under Section 77 from process in the state courts to enforce tax liens and full jurisdiction to adjudicate the validity and extent of all tax claims and liens.

Although under Section 77, the precise question here involved has not arisen, relief much like that involved in Order No. 289, has been granted in cases involving equity receiverships in circumstances very similar to those here involved.

In *Crawford* v. *Duluth Street Ry. Co.*, 60 F. (2d) 212 (C. C. A. 7 1932), the City of Superior and the State of Wisconsin appealed from the district court's order authorizing the abandonment of certain lines of a street railway by its receiver, without further awaiting action by the city council. The receiver had presented a petition for permission to discontinue operations on certain branch lines to the mayor and council who had held public hearings upon the petition but who had neither granted nor denied the petition. The Circuit Court of Appeals for the Seventh Circuit held that the district court could properly authorize the abandonment of service where the losses involved in such service were so substantial as to endanger the operation of the system. In that case, as in the case of the Old Colony, the entire system was being operated at a loss, caused by the passenger service on three branch lines and the court recognized that relief was essential and could not be delayed pending possible action by the state regulatory body. Otherwise there would be a deprivation of rights under the Constitution.

The majority opinion of the Circuit Court of Appeals in the instant case cites this decision but attempts to distinguish it on the ground that the plaintiff there had pleaded that the city council would not entertain their petition, although the opinion admits that the court in the *Duluth* case did not put the result on that ground.[6]

The distinction seems inadequate in view, not only of the facts of *Duluth* case, but of the stipulation (R. 76) entered into in the case at bar, that "the hearings (before the Massachusetts Department of Public Utilities) have not been completed and may not be completed for a considerable time in the future". The significant fact is that in both the *Duluth* case and the case at bar the District Court acted to preserve the estate in its custody from depletion without reference to a state regulatory body.

State of Iowa v. *Old Colony Trust Co.*, 215 Fed. 307 (C. C. A. 8, 1914), was a suit to foreclose a mortgage. The federal court directed the receivers to abandon a stretch of railroad. The State of Iowa and others appealed on the ground that under the state statute the state court only had jurisdiction. The Circuit Court of Appeals held that the federal district court had the power to make the order. We shall discuss later (Brief, p. 26) the suggested distinction made by the majority opinion in the case at bar, based on the difference between a court and a specialized regu-

[6] The only finding of the district court relating to the inaction of the council appears in the record in that case at page 155:

"7. That the Receiver filed a petition with the City of Superior, Wisconsin, on November 5, 1930, for permission to abandon street railway operations and remove the equipment thereof from the branch lines of said system hereinabove designated; that the Mayor and Common Council of said City had public hearings upon said petition and had said matter for consideration before its council meetings, but has not acted upon the same and said petition has neither been granted nor denied."

latory tribunal. The Circuit Court of Appeals in the *Iowa* case reached its conclusions without benefit of Section 77, by virtue of the inherent power of the court to prevent depletion of property in its hands.

The Legislative History of Section 77 Shows Its Broad Purpose.

The broad purpose of Section 77 is shown plainly by its Congressional history.[7] That history in itself supports the construction urged in this brief that, in framing a statute designed to facilitate and expedite interstate railroad reorganizations in a widespread crisis in the railroad industry, Congress conferred jurisdiction upon the court, free from state laws and state regulations that interfere with reorganization. In 1933 Congress was confronted with a national transportation crisis, as is shown, for example, by the statement of Representative Rayburn while discussing a bill which was the basis of the 1933 enactment (76 Cong. Rec. 2917; 72nd Cong., 2d Sess.):

> "The proposed section 76 of this bill has been drawn to meet what, in my judgment, is an emergency. I am informed that several important railroad companies and a number of smaller ones face inevitable receivership within the next few months * * *."

[7] As to the legislative history of Section 77, see generally 76 Cong. Rec. (72nd Cong. 2nd Sess.), pages 2902, 2908, 2917, 4880, 4884, 4907, 5107, 5117, 5136, 5350, 5360; 79 Cong. Rec. (74th Cong. 1st Sess.), pages 13302-13309; Craven and Fuller "The 1935 Amendments of Railroad Bankruptcy Law", 49 Harvard Law Review 1254, 1259; Friendly "Amendment of the Railroad Reorganization Act", 36 Columbia Law Review 27-59; Simpson, "Fifty Years of American Equity", 50 Harvard Law Review 171, 191, 192; Lowenthal "The Railroad Reorganization Act", 47 Harvard Law Review 18-58.

The proposed legislation was looked upon, not only as a form of bankruptcy enactment, but, in part at least, as a regulation of interstate commerce, for in discussing an early form of the Bill, Representative Summers, Chairman of the House Judiciary Committee, said (76 Cong. Rec. 2908; 72nd Congress, 2nd Session):

> "In the framing of this bill in so far as it relates to intersfate railroad companies, of course, the Congress may act under two powers, the power conferred by the interstate commerce clause of the Constitution and the power conferred by the bankruptcy provision of the Constitution."

The debates relating to this statute and its amendments indicate that Congress intended it as a means of preserving and strengthening the nation's transportation system in the interest of the nation.[8] Representative M Laughlin in the debate on the 1935 amendments to the Act, said (79 Cong. Rec., p. 13301):

> "It is the earnest hope of the committee that this bill, when enacted into law, will facilitate receiverships, bring about sound reorganizations, and strengthen the railroads of this country."

The terms of the Act, both as orginally enacted and as amended; support this view. The only persons now eligible for reorganization under the statute are defined by subdivision (m) of the Act as "any common carrier by railroad engaged in the transportation of persons or property in interstate commerce". Furthermore, as has been stated above,

[8] Compare the broad construction accorded the Transportation Act of 1920 to effectuate this same purpose:
New England Divisions Case, 261 U. S. 184, 189;
Dayton-Goose Creek Ry. v. United States, 263 U. S. 456, 477;
Colorado v. United States, supra, 271 U. S. 153.

various provisions of the Act are related to provisions of the Interstate Commerce Act.

Had Congress intended to impose the additional requirement of compliance with all valid state laws or to subject the operation of the debtor's business to the jurisdiction of the state regulatory commissions, regardless of conflict with the administration of the bankruptcy estate, it could easily have done so. That it did not so intend is borne out by the fact of the significant rejection of an all inclusive amendment during the debate in Congress at the time of the original passage of Section 77. This provided as follows:

> "All existing laws relating to railroads or railways engaged in interstate commerce shall be applicable to any trustee appointed and operating a railroad or railway pursuant to this section" (76 Cong. Rec., pp. 5118 *et seq.*).

From the debates in Congress and from the economic history of the times, we conclude that Congress intended to clothe the courts with adequate jurisdiction to promote reorganization proceedings and to protect and promote interstate commerce, reserving jurisdiction solely to the Interstate Commerce Commission and only where expressly reserved.

Section 65 of the Judicial Code Is Inapplicable.

Reference was made at the end of the majority opinion in the Circuit Court of Appeals (R. 105, 106) to Section 124 of Title 28, of the United States Code, usually referred to as Section 65 of the Judicial Code. Under Section 65 the receiver or manager in possession of any property must manage and operate it according to the requirements of the valid laws of the state in which such property is situated, "in the

same manner that the owner or possessor thereof would be bound to do if in possession thereof."

The provisions of this Section, however, are inapplicable to the case at bar.

In the first place Section 65 presupposes the inherent power of a court to preserve the property in its custody. The situation in the case at bar plainly involves the well-settled exception to the application of Section 65, that a court of equity can protect such property from confiscation or depletion. *In re Tyler, supra*, 149 U. S. 164; *Crawford* v. *Duluth, supra*, 60 F. (2d) 212; and see *Fidelity Title & Trust Co.* v. *Kansas Natural Gas Co.*, 219 Fed. 614 (D. C. Kansas, 1913); *Franklin County* v. *Public Utilities Commission*, 107 Ohio St. 442 (1923).

Sections 66 and 265 of the Judicial Code (28 U. S. C. A. §§125 and 379) offer analogies. The former provides that receivers shall be subject to suit in the state courts, but it has been held that where the court's jurisdiction over property in its custody is threatened by a suit in a state court, the latter is without jurisdiction. *American Brake Shoe & Foundry Co.* v. *I. R. T., supra*, 10 Fed. Supp. 512, aff'd without opinion 76 F. (2d) 1002, cert. den. 295 U. S. 760; *Field* v. *Kansas City Refining Co.*, 296 Fed. 800 (C. C. A. 8, 1924), cert. den. 266 U. S. 618; 9 F. (2d) 213, cert. den. 271 U. S. 671. Section 265 provides in similar vein that the federal courts shall not enjoin action by state courts except in connection with bankruptcy cases. Nevertheless, federal equity courts enjoin action which threatens their own jurisdiction based on possession of a receivership estate. *Julian* v. *Central Trust Co.*, 193 U. S. 93.

A second reason exists why Section 65 does not apply. By Section 77 Congress has occupied the field of the control of railroads reorganizing under that section both as an exercise of the bankruptcy power and commerce power, declaring in effect that when a railroad is under Section 77 the trustees may act contrary to state laws if necessary to preserve the estate and to prepare

for and accomplish the fundamental purpose of Section 77—viz. reorganization. That this is so is clear from the express language of Section 77, sub-division (f) permitting the carrying out of reorganization plans, regardless of state laws and the orders of state regulatory authorities. For these reasons this express language of the subdivision, by implication at least, and the language of subdivision (c) (2), relieve trustees under Section 77 of the obligation to comply with the provisions of state law where compliance will impede or delay eventual reorganization.

Still a third reason why Section 65 does not apply is that while "the valid laws of the state", as that term is used in Section 65, may include "decisions" of the local tribunals as well as statutes of the state (*cf. Erie R. Co.* v. *Tompkins*, 304 U. S. 64), Section 65 refers only to those substantive laws which relate to management and operation of railroads, and not to procedural matters relating, as here, to the proper forum, and the steps to be followed, in determining whether particular services should be discontinued. A somewhat similar problem arose in *Board of Directors St. Francis Levee Dist.* v. *Kurn*, *supra*, 91 F. (2d) 718, cert. den. 302 U. S. 750; *Board of Directors St. Francis Levee Dist.* v. *Kurn*, *supra*, 98 F. (2d) 394, cert. den. 305 U. S. 647, where trustees under Section 77 obtained an injunction enjoining a tax district from collecting taxes as the property was in the custody and control of the bankruptcy court and a suit would obstruct orderly reorganization. See also *In re Denver & R. G. W. R. Co.*, 23 F. Supp. 298 (D. C. Col. 1938).

The Bankruptcy Court is the Appropriate Tribunal for the Determination of the Issues Here Presented.

The Circuit Court of Appeals assumed in this case that the bankruptcy court is not an appropriate tribunal for the determination of the issues here presented (R. 105, 106) and distinguished *State of Iowa* v. *Old Colony Trust Co.*, *supra*, 215 Fed. 307. The

distinction is not justified in view of the language used by the court itself earlier in its opinion in that case:

> "We have already seen that on a state of facts such as disclosed by the pleadings and proof in this case any railroad company would have been justified on general principles of the common law in abandoning a part of its road in similar condition to that sought to be abandoned in this case, and without doubt could have received judicial sanction for such abandonment at common law irrespective of any statute" (pp. 313-314).

The bankruptcy court *is specialized* as to matters of the type requiring determination here. Congress has specifically entrusted the court with certain definite administrative powers. Some of these, such as the power to prescribe the keeping of additional accounts [subdivision (c)(2)] the court exercises independently of the Commission. Others, such as the power to supervise the payments of fees [subdivisions (c)(2) and (c) (12)] are independently exercised within the limits prescribed by the Commission, and still others require action both by court and Commission. All are administrative powers, and all are exercised at least in part by the court as a part of the system set up by Congress, and show an intent to make the court, as far as necessary to accomplish the ends of the Section, a specialized administrative agency. Indeed, the court, entrusted with these powers from the inception of these proceedings, has long been familiar with the financial condition of the Old Colony and the New Haven. Therefore, it is clear that the questions here raised are most appropriate for determination by the bankruptcy court, to which Congress has entrusted the administration of the reorganization.

POINT II.

Order No. 289, here under review, was necessary to preserve and prevent waste of the property of an interstate railroad, to bring about its rehabilitation, in order to make possible the formulation of, and to effect a plan of reorganization.

For the period from October 24, 1935, to December 31, 1937, the Old Colony was charged with over $11,000,000 on account of deficits incurred in the operation of its owned and leased lines (R. 23). For 1937 passenger service showed a net railway operating loss of over $2,600,000, and in 1938 the loss was increasing at an even greater rate (R. 23, 24). These devastating losses were the sole cause of the Old Colony operating deficit. The competitive condition producing these losses is permanent (R. 25). The relief actually granted by Order No. 289 is reduction of losses by about $658,000 annually in the Old Colony alone (R. 24). Continuation of the passenger service would jeopardize the freight service (R. 26). In short, no plan for the reorganization of the Old Colony can be formulated or consummated without the operating changes contemplated (R. 25).

It was plainly within the jurisdiction of the court to prevent the further dissipation of these assets and their eventual consumption. It was the plain duty of the court, under Section 77 and general principles of law, to direct the Trustees to put into effect the proposed operating economies.

The delay, past and future, plays an important part. On December 28, 1937, the Trustees applied to the Department of Public Utilities for approval of an abandonment of 88 local passenger stations. The Trustees advised the Department of time-tables proposed to be effective March 27, 1938. Hearings were not begun until February 23, 1938, and although hearings were held from time to time, by the end of

June, 1938, the Department had entered no order. Massachusetts admitted, in the form of a stipulation requested by it, that these hearings might not be completed for a considerable time in the future (R. 5, 6, 76).

The outstanding bonded indebtedness of the Old Colony, exclusive of bonds pledged to secure bank loans, totals $14,348,000, and the bank loans total $1,400,000, secured by $2,100,000 of Old Colony first mortgage bonds (R. 53). Accrued and unpaid interest would substantially increase the total. By December 31, 1937, over $11,000,000 had been charged against the Old Colony on account of operation of the Old Colony system (R. 23). The Old Colony was being charged between $15,000 and $16,000 per day, during each day of the continuance of this operating loss, computed on the basis of the estimated figure for the first half of the year 1938 (R. 53). These deficits are chargeable as a prior lien (R. 4), having priority over the Old Colony mortgage (R. 23). As of May 31, 1938, the Old Colony had $20 in its cash account and no other current assets susceptible of being readily liquidated (R. 52). It is clear that not only was the property interest of the securityholders about to be wiped out but the corpus of the estate was about to be consumed (R. 8, 65) if Order No. 289 had not been issued. The changes contemplated by Order No. 289 were essential. The Order meant a reduction of losses by about $658,000 annually in the Old Colony alone (R. 24). Immediate relief was absolutely necessary in order to afford any degree of protection to the securityholders. Thus the conclusions of Judge Hincks that the reorganization of Old Colony could not be accomplished without the operating changes contemplated and that failure to grant the relief sought would result in the confiscation of private property (R. 25, 26) are abundantly supported.

The narrow construction of Section 77 adopted by the majority opinion of the Circuit Court of Appeals would mean that Old Colony's deficits would continue

until the decisions of the state regulatory body (as to the preservation of the property and as to operating changes essential to eventual reorganization) can be obtained and tested by litigation. It would be impossible for those charged with the duty of expediting plans of reorganization to know what they have to reorganize. Until the plan makers know that certain property can be preserved and that operating losses can be substantially eliminated a plan of reorganization is impossible. Unless the operation is reduced to produce a net, liquidation, rather than reorganization, looms as a possibility. Such a narrow construction defeats the very object of Section 77.

The facts in the case at bar emphasize the absolute need for a broad construction in order to effectuate the purpose of the Act. The reorganization of the Old Colony can be accomplished only through the intermediate step of rehabilitation, promptly made and on a sound basis. In that way only can the Old Colony and, indeed, many other financially embarrassed railroads be preserved as carriers of interstate traffic. In that way only can a very considerable part of the national transportation system of the country be preserved.

CONCLUSION.

It is respectfully submitted that the decree of the Circuit Court of Appeals for the Second Circuit should be reversed.

Respectfully submitted,

EDWARD R. BRUMLEY,
FRED N. OLIVER,
Counsel for Petitioners.

WILLARD P. SCOTT,
OSCAR M. SHAW,
R. AMMI CUTTER,
SAMUEL W. EARNSHAW,
Of Counsel.

Appendix.

Article I, Section 8 of the Constitution of the United States reads in part as follows:

> "The Congress shall have power * * *
>
> To establish * * * uniform Laws on the subject of Bankruptcies throughout the United States."

Section 77(a) of the Bankruptcy Act, 11 U. S. C. A. §205(a) reads in part as follows:

> "* * * If the petition is so approved, the court in which such order is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located, and shall have and may exercise in addition to the powers conferred by this section all the powers, not inconsistent with this section, which a Federal court would have had if it had appointed a receiver in equity of the property of the debtor for any purpose. * * *"

Section 77(c)(2), 11 U. S. C. A. §205(c)(2) reads in part as follows:

> "* * * The trustee or trustees so appointed, upon filing such bond, shall have all the title and shall exercise, subject to the control of the judge and consistently with the provisions of this section, all of the powers of a trustee appointed pursuant to section 72 or any other section of this title, and, to the extent not inconsistent with this section, if authorized by the judge, the powers of a receiver in an equity proceeding, and, subject to the control of the judge and the jurisdiction of the Commission as provided by chapter 1 of Title 49 as on August 27, 1935, or thereafter amended, the power to operate the business of the debtor. * * *"

Section 77(c)(6), 11 U. S. C. A. §205(c)(6), reads as follows:

> "If a lease of a line of railroad is rejected, and if the lessee, with the approval of the judge, shall elect

no longer to operate the leased line, it shall be the duty of the lessor at the end of a period to be fixed by the judge to begin the operation of such line, unless the judge, upon the petition of the lessor, shall decree after hearing that it would be impracticable and contrary to the public interest for the lessor to operate the said line, in which event it shall be the duty of the lessee to continue operation on or for the account of the lessor until the abandonment of such line is authorized by the Commission in accordance with the provisions of section 1 of Title 49."

Section 77(f), 11 U. S. C. A. §205(f) reads in part as follows:

"* * * Upon confirmation of the plan, the debtor and any other corporation or corporations organized or to be organized for the purpose of carrying out the plan, shall have full power and authority to, and shall put into effect and carry out the plan and the orders of the judge relative thereto, under and subject to the supervision and the control of the judge, the laws of any State or the decision or order of any State authority to the contrary notwithstanding * * *."

Section 77(j), 11 U. S. C. A. §205(j) reads in part as follows:

"In addition to the provisions of section 29 of this title for the staying of pending suits against the debtor, the judge may enjoin or stay the commencement or continuation of suits against the debtor until after final decree; and may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree * * *."

Section 77(l), 11 U. S. C. A. §205 (l), reads as follows:

"In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and its property, shall be the same

as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed."

Section 77(o), 11 U. S. C. A. §205(o) reads in part as follows:

"The trustee or trustees, from time to time, shall determine what lines or portions of lines of railroad and what other property of the debtor, if any, should be abandoned or sold during the pendency of the proceedings in the interest of the debtor's estate and of ultimate reorganization but without unduly or adversely affecting the public interest, and shall present to the judge petitions, in which other parties in interest may join, for authority to abandon or to sell any such property; and upon order of the judge made after a hearing pursuant to such reasonable notice by publication or otherwise as the judge may direct to parties in interest, authorizing any such abandonment or sale, but only with the approval and authorization of the Commission when required by chapter 1 of Title 49, as amended February 28, 1920, or as it may be hereafter amended, the trustee or trustees shall take all steps and carry out all proceedings necessary for the consummation of any such abandonment or sale in accordance with the order of the judge. Any such order of the judge shall be a final order for the purposes of appeal. The judge may order and decree any sale of property, whether or not incident to an abandonment, under this subsection at public or private sale and subject to or free from liens. * * *".

Section 2 of the Bankruptcy Act, 11 U. S. C. A. §11, reads in part as follows:

"The courts of bankruptcy as defined in the previous chapter, viz., the district courts of the United States in the several States, * * * are made courts of bankruptcy, and are invested, within their respective

territorial limits as established on July 1, 1898, or as they may be thereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms, as they were on July 1, 1898, or may be thereafter held, to * * * (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this title; * * *"

Section 77B(c) (2) of the Bankruptcy Act, 11 U. S. C. A. §207(c) (2) reads as follows:

"In case the debtor is a utility subject to the jurisdiction of a regulatory commission or commissions or other regulatory authority or authorities, created by the laws of the State or States in which the properties of the debtor are operated, a plan of reorganization shall not be confirmed until (a) it shall be submitted to each such commission or authority having regulatory jurisdiction over the debtor, (b) an opportunity shall be afforded each such commission or authority to suggest amendments or objections to the plan, and (c) the judge shall consider such amendments or objections at a hearing at which each such commission or authority may be heard. In case the debtor is a public utility corporation wholly intrastate in character no court shall approve any plan of reorganization if the regulatory commission of such State having jurisdiction over such public utility certifies that the public interest is affected by said plan, unless said regulatory commission shall first approve of said plan as to the public interest therein and the fairness thereof. If said regulatory commission shall not within thirty days or such additional period as the court may prescribe after the submission of a plan to it file said certificate it shall be deemed that the public interest is not affected by said plan."

Section 77B(f) of the Bankruptcy Act, 11 U. S. C. A. §207(f) reads in part as follows:

> "* * * (7) The debtor, and every other corporation, issuing securities or acquiring property under the plan, is authorized by its charter or by applicable State or Federal laws, upon confirmation of the plan, to take all action necessary to carry out the plan, and that, in case the debtor is a utility corporation subject to the jurisdiction of a regulatory commission or commissions or other regulatory authority or authorities, created by the laws of the State or States in which the properties of the debtor are operated, all authorizations, approvals, or consents of each such commission or authority required by the laws of such State or States, have been obtained."

Section 65 of the Judicial Code, 28 U. S. C. A. §124, reads:

> "Whenever in any cause pending in any court of the United States there shall be a receiver or manager in possession of any property, such receiver or manager shall manage and operate such property according to the requirements of the valid laws of the state in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof. Any receiver or manager who shall wilfully violate any provision of this section shall be fined not more than $3,000, or imprisoned not more than one year, or both."

Section 66 of the Judicial Code, 28 U. S. C. A. §125, reads as follows:

> "Every receiver or manager of any property appointed by any court of the United States may be sued in respect of any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which such receiver or manager was appointed; but such suit shall be sub-

ject to the general equity jurisdiction of the court in which such manager or receiver was appointed so far as the same may be necessary to the ends of justice."

Section 265 of the Judicial Code, 28 U. S. C. A. §379, reads as follows:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

Section 128 of Chapter 160 of the Massachusetts General Laws (Ter. Ed.) reads as follows:

> "A railroad corporation which has established and maintained a passenger station throughout the year for five consecutive years at any point upon its railroad shall not abandon such station, unless it is relocated under the following section, nor substantially diminish the accommodation furnished by the stopping of trains thereat as compared with that furnished at other stations on the same railroad, except with the written approval of the department after notice posted in and on said station for a period of thirty days immediately preceding a public hearing thereon."

Section 129 of Chapter 160 of the Massachusetts General Laws (Ter. Ed.) reads as follows:

> "A railroad corporation may relocate passenger stations and freight depots, with the written approval of the department and of the board of aldermen of the city or the selectmen of the town where such stations or depots are situated."

Section 16 of Chapter 159 of the Massachusetts General Laws (Ter. Ed.) reads as follows:

> "If the department is of opinion, after a hearing had upon its own motion or upon complaint, that the

regulations, practices, equipment, appliances or service of any common carrier are unjust, unreasonable, unsafe, improper or inadequate, the department shall determine the just, reasonable, safe, adequate and proper regulations and practices thereafter to be in force and to be observed, and the equipment, appliances and service thereafter to be used, and shall fix and prescribe the same by order to be served upon every common carrier to be bound thereby. The department may after such a hearing, order any railway company to build and operate any just and reasonable extensions of its lines for which it may have been or may be granted locations and order from time to time that a railroad company shall operate its lines, of standard gauge, or such parts thereof as the department shall prescribe, by electric power instead of steam power, and in its order shall prescribe the time within which the work of electrification shall be done. Before making such order, the department shall consider the relative importance and necessity of the changes in any specific regulations, practices, equipment and appliances proposed to be included therein and of other changes which may be brought to its attention in the course of the hearing, the financial ability of the carrier to comply with the requirements of the order, and the effect of the carrier's compliance therewith, upon its financial ability to make such other changes, if any, as may be deemed by the department of equal or greater importance and necessity in the performance of the service which the carrier has professed to render to the public. Every such common carrier shall obey every requirement of every such order so served upon it, and do everything necessary or proper in order to secure absolute compliance with every such order by all its officers, agents and employees."

Section 5 of Chapter 25 of the Massachusetts General Laws (Ter. Ed.) reads in part as follows:

"When so requested by any party interested, the commission, or any member or members acting for

the commission, shall rule upon any question of substantive law properly arising in the course of any proceedings before the commission or any member or members thereof, and any party in interest aggrieved by such ruling may object thereto, and may secure a review thereof as hereinafter provided. Any failure or refusal of the commission, or of any member or members thereof acting for the commission, to rule upon such a question at the request of any party in interest as aforesaid within ten days after such request, shall be taken and recorded as a ruling adverse to the party requesting the ruling.

"The supreme judicial court shall have jurisdiction in equity to review, modify, amend or annul any ruling or order of the commission, or of any member or members representing the commission, but only to the extent of the unlawfulness of such ruling or order * * *."

FILE COPY

Supreme Court of the United States.

OCTOBER TERM, 1938.

No. 685. 7

IN THE MATTER OF

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, *Debtor.*

HOWARD S. PALMER ET ALL.,

Petitioners,

v.

THE COMMONWEALTH OF MASSACHUSETTS,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

PAUL A. DEVER,
Attorney General,
EDWARD O. PROCTOR,
EDWARD A. PECCE,
Assistant Attorneys General.

ADDISON C. GETCHELL & SON, LAW PRINTERS, BOSTON.

INDEX.

	Page
The point of decision of which review is sought	1
Discussion	2
(1) The power to allow or disallow a railroad to abandon passenger service upon lines within the state resides in the several states in the absence of federal legislation displacing that power, subject only to judicial review to determine that the state action offends no constitutional guaranties and does not place an undue burden on interstate commerce	2
(2) In Massachusetts the power has been lodged by the Legislature in the Department of Public Utilities, subject to judicial review by the Supreme Judicial Court of the Commonwealth	3
(3) The states' power was not displaced by the Interstate Commerce Act, under which the Interstate Commerce Commission was given no power to deal with partial abandonment of service, such as passenger service alone, but only with total abandonment of lines and the operation thereof when affecting interstate commerce, specifically reserving to the states power to require reasonable freight and passenger service for intrastate business when not inconsistent with the Commission's lawful orders	4
(4) The states' power was not displaced by Section 77 of the Bankruptcy Act	5
(a) The express provisions of the statute dealing with abandonment of lines, property and operations	5
(b) The general provisions of the statute dealing with jurisdiction of the debtor and its property	7
Appendix	10

TABLE OF AUTHORITIES CITED.

	Page
Atlantic Coast Line R.R. Co. v. North Carolina Corporation Commission, 206 U.S. 1	2
Boston & Albany R.R. v. New York Central R.R., 256 Mass. 600	4
Brooks-Scanlon Co. v. Railroad Commission of Louisiana, 251 U.S. 396	6
Bullock v. Railroad Commission of Florida, 254 U.S. 513	6
Chesapeake & Ohio Ry. v. Public Service Commission of the State of West Virginia, 242 U.S. 603	2
Chicago, Burlington & Quincy R.R. Co. v. Railroad Commission of Wisconsin, 237 U.S. 220	2
Colorado v. United States, 271 U.S. 153	7
Crawford v. Duluth St. Ry. Co., 60 Fed. (2d) 212	8
Erb v. Morasch, 177 U.S. 584	8
Fort Smith Light & Traction Co. v. Bourland City Commissioners, 267 U.S. 330	2
Gillis v. State of California, 293 U.S. 62	8
Henderson Water Co. v. Corporation Commission, 269 U.S. 278	8
Lake Shore & Michigan Southern Ry. Co. v. Ohio, 173 U.S. 285	3
Lawrence v. St. Louis-San Francisco Ry. Co., 274 U.S. 588	8
Mercantile Trust Co. v. Tennessee Central R. Co., 286 Fed. 425 (D.C. Tenn. 1922)	8
Mississippi Railroad Commission v. Mobile & Ohio R.R. Co., 244 U.S. 388	2
Missouri Pacific Ry. Co. v. Kansas, 216 U.S. 262	2
Morris & Essex R. Co. Proposed Abandonment, 175 I.C.C. 49	5
Myers v. Bethlehem Corporation, 303 U.S. 41	7

	Page
Pittsburgh Shawmut Coal Co. v. Delaware & N. R. Co., 289 Fed. 133 (D.C. N.Y. 1923)	8
Public Convenience Application of K. C. S. Ry., 94 I.C.C. 691	5
Railroad Commission of Texas v. Eastern Texas R.R. Co., 264 U.S. 79	6
Transit Commission v. United States, 284 U.S. 360	7
Tyler, In Re, 149 U.S. 164	8
United States v. Harris, 177 U.S. 305	8
Western & Atlantic R.R. v. Georgia Public Service Commission, 267 U.S. 493	8
Wolff Co. v. Industrial Court, 262 U.S. 522	6
Act of Mar. 3, 1933, 47 Stat. 1477, c. 204, as amended by Acts of Aug. 27, 1935, c. 774, 49 Stat. 911, secs. (c, 6), (o)	6
Bankruptcy Act, section 77 (11 U.S.C.A. 205)	1, 5, 7
74th Congress, House Doc. 89	5
Interstate Commerce Act, Act Feb. 1920, c. 91; 41 Stat. 474, as amended (49 U.S.C.A. sec. 1, par. 18)	4, 5, 6
Judicial Code, section 65	8
Judicial Code, section 266	7
Massachusetts General Laws (Tercentenary Ed.) c. 25	3
Massachusetts General Laws (Tercentenary Ed.) c. 159	3
Massachusetts General Laws (Tercentenary Ed.) c. 160, sec. 128	3, 4
28 U.S.C.A. sec. 124	8
11 U.S.C.A. sec. 203 f	9
28 U.S.C.A. sec. 380	7

Supreme Court of the United States.

OCTOBER TERM, 1938.

No. 685.

IN THE MATTER OF

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, *Debtor.*

HOWARD S. PALMER ET ALI.,

Petitioners,

v.

THE COMMONWEALTH OF MASSACHUSETTS,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

THE POINT OF DECISION OF WHICH REVIEW IS SOUGHT.

The single question raised on this petition is whether the United States District Court in Connecticut, sitting as a court of bankruptcy in railroad reorganization proceedings under section 77 of the Bankruptcy Act (11 U.S.C.A. 205), had authority to direct the abandonment of passenger service in Massachusetts upon lines which the debtor Railroad continues to own and operate for freight service, notwithstanding the pendency of proceedings for abandonment instituted by the trustees of the debtor Railroad before the

Massachusetts Department of Public Utilities, duly vested with authority to grant or disallow such abandonment.

No constitutional issue is involved. The power of Congress to delegate such authority to the District Courts was conceded. "The question is merely one of statutory interpretation" (Swan, J., dissenting, Record, 148).

The respondent Commonwealth submits that the majority judges (Learned Hand and Augustus N. Hand, JJ.) were right in holding that Congress did not delegate such authority to the District Courts, and that this decision is not in conflict with the decisions of this Court or with those of other Circuit Courts of Appeals.

Discussion.

(1) The power to allow or disallow a railroad to abandon passenger service upon lines within the state resides in the several states in the absence of federal legislation displacing that power, subject only to judicial review to determine that the state action offends no constitutional guaranties and does not place an undue burden on interstate commerce.

Atlantic Coast Line R.R. Co. v. *North Carolina Corporation Commission*, 206 U.S. 1, 19.

Missouri Pacific Ry. Co. v. *Kansas*, 216 U.S. 262, 276, 278, 279.

Chicago, Burlington & Quincy R.R. Co. v. *Railroad Commission of Wisconsin*, 237 U.S. 220, 226, 227.

Chesapeake & Ohio Ry. v. *Public Service Commission of the State of West Virginia*, 242 U.S. 603, 607, 608.

Mississippi Railroad Commission v. *Mobile & Ohio R.R. Co.*, 244 U.S. 388, 390, 391.

Fort Smith Light & Traction Co. v. *Bourland City Commissioners*, 267 U.S. 330, 332, 333.

This power of the states to regulate is not impaired by the constitutional grant to Congress to regulate interstate commerce, but exists in full force until displaced by legislation enacted by Congress.

Lake Shore & Michigan Southern Ry. Co. v. *Ohio*, 173 U.S. 285, 299-301.

Harlan, J.:

> ". . . While the laws of the States must yield to acts of Congress passed in execution of the powers conferred upon it by the Constitution, *Gibbons* v. *Ogden*, 9 Wheat. 1, 211, the mere grant to Congress of the power to regulate commerce with foreign nations and among the States did not, of itself and without legislation by Congress, impair the authority of the States to establish such reasonable regulations as were appropriate for the protection of the health, the lives and the safety of their people. . . . Until displaced by such national legislation as Congress may rightfully establish under its power to regulate commerce with foreign nations and among the several States, the validity of the statute, so far as the commerce clause of the Constitution of the United States is concerned, cannot be questioned."

(2) In Massachusetts the power has been lodged by the Legislature in the Department of Public Utilities, subject to judicial review by the Supreme Judicial Court of the Commonwealth.

The Department of Public Utilities of Massachusetts derives its authority from the Massachusetts General Laws (Tercentenary Ed.) c. 25, together with certain other provisions contained in chapter 159, "Common Carriers," and chapter 160, "Railroads" (Record, 7).

Chapter 160, sec. 128, provides that "A railroad corporation which has established and maintained a passenger station throughout the year for five consecutive years at any point upon its railroad shall not abandon such station . . ., nor substantially diminish the accommodation furnished by the stopping of trains thereat as compared with that furnished at other stations on the same railroad, except with the written approval of the department after notice posted in and on said station for a period of thirty days immediately preceding a public hearing thereon."

And see—

Boston & Albany R.R. v. *New York Central R.R.*, 256 Mass. 600, 618.

(3) *The states' power was not displaced by the Interstate Commerce Act, under which the Interstate Commerce Commission was given no power to deal with partial abandonment of service, such as passenger service alone, but only with total abandonment of lines and the operation thereof when affecting interstate commerce, specifically reserving to the states power to require reasonable freight and passenger service for intrastate business when not inconsistent with the Commission's lawful orders.*

The Interstate Commerce Act, Act Feb. 1920, c. 91; 41 Stat. 474, as amended (49 U.S.C.A. sec. 1, par. 18), provides:

". . . no carrier by railroad subject to this chapter shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the commission a certificate that the present or future public convenience and necessity permit of such abandonment."

The Interstate Commerce Commission has held that this does not confer upon the Commission power to authorize

a partial discontinuance of rail service, such as the abandonment merely of passenger service on a branch line.

Public Convenience Application of K. C. S. Ry., 94 I.C.C. 691, 692.
Morris & Essex R. Co. Proposed Abandonment, 175 I.C.C. 49, 52.

The Act specifically reserves the right of the states to require reasonable passenger service for intrastate business,

> "*Provided, however,* That nothing in this chapter shall impair or affect the right of a State, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except insofar as such requirement is inconsistent with any lawful order of the commission made under the provisions of this chapter."

(4) The states' power was not displaced by Section 77 of the Bankruptcy Act.

(a) The express provisions of the statute dealing with abandonment of lines, property and operations.

The statute as originally enacted in 1933 contained no provisions for the sale or abandonment of unprofitable lines or operations.

After two years of experience under the Act, the need of some such provisions became apparent and they were recommended to Congress by the Federal Coordinator of Transportation.

> "Minor amendments are necessary, designed to facilitate the abandonment of unremunerative branches of service" (74th Congress, House Doc. 89).

This suggestion led to the enactment of two subsections (c, 6) and (o), neither of which, however, gave the Court power to authorize abandonment of service on retained lines.

Section (c, 6) (see Appendix, *infra*, p. 10), dealing with rejection of unexpired leases of lines, authorized not the Court, but the Interstate Commerce Commission, to authorize an abandonment of operations on lines whose leases were rejected.

Section (o) (see Appendix, *infra*, p. 10) authorized the Court to permit abandonment of "lines and other property," but not operations, with the approval and authorization of the Interstate Commerce Commission when required by the Interstate Commerce Act.

It will be observed, therefore, that the Federal Coordinator's suggestion for amendments "to facilitate the abandonment of unremunerative branches of service" was given effect in section (o) only in so far as abandonment of branches of service involved outright abandonment or sale of the line itself.

And this was a sound distinction for Congress to make. For while a railroad may lawfully surrender its unprofitable franchises—

> *Brooks-Scanlon Co.* v. *Railroad Commission of Louisiana*, 251 U.S. 396, 399;
> *Bullock* v. *Railroad Commission of Florida*, 254 U.S. 513, 520;
> *Railroad Commission of Texas* v. *Eastern Texas R.R. Co.*, 264 U.S. 79, 85, 86;
> *Wolff Co.* v. *Industrial Court*, 262 U.S. 522, 543—

it may not retain those franchises and refuse to comply with the constitutional conditions for service upon which they were granted, without legislative or congressional sanction.

Cases cited *supra*, at p. 2.

Cf. *Colorado* v. *United States*, 271 U.S. 153, 165.

Transit Commission v. *United States*, 284 U.S. 360, 369.

The exercise of such sanction Congress appears not to have chosen to delegate to the bankruptcy courts.

And as such power would be in derogation of the sovereign powers of the states, it surely ought not to be implied in the absence of apt and explicit language.

(b) The general provisions of the statute dealing with jurisdiction of the debtor and its property.

Failing to find an explicit grant of authority to the bankruptcy courts to permit abandonment of service on retained lines, the petitioners seek to spell out such authority from the general terms of the Act dealing with jurisdiction.

Subsection (a) confers on the Court "exclusive jurisdiction of the debtor and its property" and the powers of federal courts in cases where they have appointed receivers in equity (Petitioner's brief, p. 17).

"Exclusive jurisdiction of the debtor and its property" naturally refers to jurisdiction of judicial tribunals, not to tribunals which are legislative agents.

Both Congress and this Court have been solicitous in holding inviolate the functions of such state tribunals.

Section 266 of the Judicial Code provides that only a three-judge court may determine that the decisions of state tribunals are confiscatory (28 U.S.C.A. sec. 380).

And this Court has repeatedly held that the deliberations of such tribunals are not to be prevented or forestalled even upon the ground that the holding of the hearing would result in irreparable damage.

Myers v. *Bethlehem Corporation*, 303 U.S. 41, 51.

Lawrence v. *St. Louis-San Francisco Ry. Co.*, 274 U.S. 588, 595.

Western & Atlantic R.R. v. *Georgia Public Service Commission*, 267 U.S. 493, 496.

Henderson Water Co. v. *Corporation Commission*, 269 U.S. 278.

It is only when the state tribunal refuses to act at all that the Court may proceed in disregard of it, as in—

Crawford v. *Duluth St. Ry. Co.*, 60 Fed. (2d) 212 (C.C.A. 7th).

The inherent power of the Court to protect the property in its custody "from invasion" (*In Re Tyler*, 149 U.S. 164, 181) does not, therefore, contemplate or permit the ouster of the state legislative or administrative tribunals.

Congress has further provided in section 65 of the Judicial Code that a receiver in any United States Court "shall manage and operate" the property in receivership "according to the requirements of the valid laws of the state in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof" (28 U.S.C.A. sec. 124).

Under this statute a railroad receiver must operate the road according to the laws of the state in which it is situated.

Erb v. *Morasch*, 177 U.S. 584.

United States v. *Harris*, 177 U.S. 305.

Mercantile Trust Co. v. *Tennessee Central R. Co.*, 286 Fed. 425 (D.C. Tenn. 1922).

Pittsburgh Shawmut Coal Co. v. *Delaware & N. R. Co.*, 289 Fed. 133 (D.C. N.Y. 1923).

Cf. *Gillis* v. *State of California*, 293 U.S. 62, in which it was held that, where a California statute required a dis-

tributor of motor vehicle oil to obtain a license and surety bond to secure the payment of taxes, a receiver of such distributor could not operate the business in disregard of that law even though it was impossible to furnish the bond.

The Massachusetts law required that a railroad could abandon passenger stations only with the approval of the Department of Public Utilities. The trustees, endowed with the authority of federal equity receivers, were subject to this law.

It is only after the plan of reorganization has been approved that section (f) provides it shall prevail over all state laws and the orders of any state authority (11 U.S.C.A. sec. 203 f). And this obviously cannot have reference to partial abandonment of services upon retained lines, for as soon as the bankruptcy court releases the reorganized railroad from its jurisdiction, the authority of the state commission to prescribe service would necessarily reattach, if it had ever been suspended.

We respectfully submit, therefore, that the decision of the Circuit Court of Appeals is indubitably correct in law, that it is in harmony with the decisions of this Court and of the other Circuit Courts of Appeals, and that therefore there is no occasion for its further review.

Respectfully submitted,

For the COMMONWEALTH OF MASSACHUSETTS,

PAUL A. DEVER,
Attorney General,
EDWARD O. PROCTOR,
EDWARD A. PECCE,
Assistant Attorneys General.

March 9, 1939.

Appendix.

Act of Mar. 3, 1933, 47 Stat. 1477, c. 204, as amended by Acts of Aug. 27, 1935, c. 774, 49 Stat. 911; June 26, 1936, c. 833, 49 Stat. 1969, "Reorganization of Railroads Engaged in Interstate Commerce":

"(c) After approving the petition:

. . . . . .

"(6) If a lease of a line of railroad is rejected, and if the lessee, with the approval of the judge, shall elect no longer to operate the leased line, it shall be the duty of the lessor at the end of a period to be fixed by the judge to begin the operation of such line, unless the judge, upon the petition of the lessor, shall decree after hearing that it would be impracticable and contrary to the public interest for the lessor to operate the said line, in which event it shall be the duty of the lessee to continue operation on or for the account of the lessor until the abandonment of such line is authorized by the Commission in accordance with the provisions of section 1 of Title 49."

. . . . . .

"(o) The trustee or trustees, from time to time, shall determine what lines or portions of lines of railroad and what other property of the debtor, if any, should be abandoned or sold during the pendency of the proceedings in the interest of the debtor's estate and of ultimate reorganization but without unduly or adversely affecting the public interest, and shall present to the judge petitions, in which other parties in interest may join, for authority to abandon or to sell any such property; and upon order of the judge made after a hearing pursuant to such reasonable notice by publication or otherwise as the judge may direct to parties in

interest, authorizing any such abandonment or sale, but only with the approval and authorization of the Commission when required by chapter 1 of Title 49, as amended February 28, 1920, or as it may be hereafter amended, the trustee or trustees shall take all steps and carry out all proceedings necessary for the consummation of any such abandonment or sale in accordance with the order of the judge. . . ."

OCT 4 1939

Supreme Court of the United States.

OCTOBER TERM, 1938.

No. 685.

IN THE MATTER OF

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, *Debtor.*

HOWARD S. PALMER ET ALL.,
Petitioners,

v.

THE COMMONWEALTH OF MASSACHUSETTS,
Respondent.

BRIEF FOR THE RESPONDENT.

PAUL A. DEVER,
Attorney General.
EDWARD O. PROCTOR,
Assistant Attorney General.

ADDISON C. GETCHELL & SON, LAW PRINTERS, BOSTON.

INDEX.

	Page
The case	1
The issue	2
The facts	3
The railroad lines involved	3
Argument	5
Under Section 77 the bankruptcy court is not vested with power to authorize its trustees to discontinue passenger service on lines which the railroad continues to retain and operate for freight service prior to confirmation of a plan of reorganization approved by the Interstate Commerce Commission	5
Synopsis of Argument	5
1. A railroad holds its franchises from the State subject to the condition that it furnish the public service which was the object of the grant of the franchises. It cannot abandon the public service which was the condition upon which its franchises were granted and still retain them	7
2. Power to permit or deny abandonment of service on intrastate lines is reserved to the several States in the absence of Federal legislation displacing that power. This power is customarily exercised by regulatory commissions. In Massachusetts it is vested in the Department of Public Utilities, subject to judicial review	11
3. Up to the enactment of Section 77 there had been no Federal legislation displacing the States' power to permit or deny partial abandonment of service on lines retained by the railroads, although the Interstate Commerce	

Page

Act conferred on the Commission power to authorize abandonment of lines and complete abandonment of operations 13

4. Section 77 as a whole manifests the clear intent that the Interstate Commerce Commission rather than the bankruptcy court is to be the arbiter as between conflicting interests of the railroad and the public, and that partial abandonment of service is authorized only as a part of the reorganization plan, after having received the Commission's approval 16

5. The general powers conferred by Section 77 upon the bankruptcy court do not embrace authority to oust State regulatory bodies from their jurisdiction to determine what services if any the railroad may abandon, pending confirmation of the reorganization plan 25

Conclusion 34

Appendix 35

Material provisions of the statutes 35

TABLE OF AUTHORITIES CITED.

Atlantic Coast Line v. No. Carolina Corp. Commission, 206 U.S. 1 9, 11

Brotherhood of Locomotive Firemen & Enginemen v. Mobile & Ohio Ry. Co., 362 Ill. 122, 199 N.E. 283 28

Brooks-Scanlon Co. v. Railroad Commission of Louisiana, 251 U.S. 396 8

Bullock v. Railroad Commission of Florida, 254 U.S. 513 8.

Chesapeake & Ohio Railway Co. v. Public Service Commission of West Virginia, 242 U.S. 603 9, 12

Page

Chicago, Burlington & Quincy Railroad Co. v. Railroad Commission of Wisconsin, 237 U.S. 220 12
Colorado v. United States, 271 U.S. 153 13, 16
Commonwealth v. Felton, 107 Ky. 330, 53 S.W. 1046 28
Continental Illinois National Bank & Trust Co. v. Chicago, Rock Island & Pacific Ry. Co., 294 U.S. 648 28, 33
Converse v. Commonwealth of Massachusetts, 101 Fed. (2) 48 2
Crawford v. Duluth Street Railway, 60 Fed. (2) 212 30
Erb v. Morasch, 177 U.S. 584 27
Fort Smith Light & Traction Co. v. Bourland et al., City Commissioners, 267 U.S. 330 8, 12
Gas & Electric Securities Co. v. Manhattan & Queens Track Corp., 253 Fed. 453 27
General Finance Corporation v. New York State Rys., 54 Fed. (2) 1008 27
Gillis v. California, 293 U.S. 62 27
Gulf Colorado & Santa Fe Railway Co. v. State of Texas, 246 U.S. 58 16
Henderson Water Co. v. Corporation Commission, 269 U.S. 278 29
International & Great Northern Ry. Co. v. Anderson County, 246 U.S. 424 27, 32
Iowa v. Old Colony Trust Co., 215 Fed. 307 31
Isaacs v. Hobbs Tie & Timber Co., 282 U.S. 734 28
Lawrence v. St. Louis-San Francisco Ry. Co., 274 U.S. 588 13, 29
Mercantile Trust Co. v. Tennessee Central R. Co., 286 Fed. 425 27
Mississippi Railroad Commission v. Mobile & Ohio R.R. Co., 244 U.S. 388 12
Missouri Pacific Railway Co. v. Kansas, 216 U.S. 262 10, 12

	Page
Morris & Essex R.R. Co.—Proposed Abandonment, 175 I.C.C. 49	15
Myers v. Bethlehem Corp., 303 U.S. 41	29, 32
New York Electric Lines Co. v. Empire City Subway Co., 235 U.S. 179	7
Pittsburgh & Shawmut Coal Co. v. Delaware & N. R. Co., 289 Fed. 133 (Dist. Ct. N.D. N.Y. 1923)	26
Public Convenience Application of K.C.S. Ry., 94 I.C.C. 691	15
Puget Sound Traction Light & Power Co. v. Reynolds, 244 U.S. 574	11
Railroad Commission of Texas v. Eastern Texas R.R. Co., 264 U.S. 79	8
St. Louis-San Francisco Ry. Co. v. Alabama Public Service Commission, 279 U.S. 560	12, 13
St. Louis & San Francisco Ry. Co. v. Public Service Commission of Missouri, 254 U.S. 535	16
Sullivan v. Hustis, 237 Mass. 441, 130 N.E. 247	28
Transit Commission v. United States, 284 U.S. 360	14, 16
Tyler, In re, 149 U.S. 164	28
United Fuel Gas Co. v. Railroad Commission of Kentucky, 278 U.S. 300	9
United States & Mexican Trust Co. v. Kansas City, M. & O. Ry. Co., 240 Fed. 505	27
Wall v. Platt, 169 Mass. 398, 48 N.E. 270	28
Western & Atlantic R.R. v. Georgia Public Service Commission, 267 U.S. 493	13, 29
Wolff Co. v. Industrial Court, 262 U.S. 522	8

Bankruptcy Act, sec. 77 (11 U.S.C. 205)	1, 2, 5, 7, 13, 16, 18, 23, 25, 33
Bankruptcy Act, sec. 77 (a)	6, 25
Bankruptcy Act, sec. 77 (b) (5)	5, 18
Bankruptcy Act, sec. 77 (c) (2)	6, 25

	Page
Bankruptcy Act, sec. 77 (c) (6)	17
Bankruptcy Act, sec. 77 (d)	6, 19, 34
Bankruptcy Act, sec. 77 (f)	18
Bankruptcy Act, sec. 77 (o)	17n.
Bankruptcy Act, sec. 77B	23
Bankruptcy Act, sec. 77B (e) (2)	23
Bankruptcy Act, sec. 77B (f)	23
74th Congress, House Doc. 89	17n.
76 Cong. Rec. (1933) Pt. 5, p. 5108	19
76 Cong. Rec. (1933) Pt. 5, p. 5110	20
76 Cong. Rec. Pt. 5, p. 5112	24
76 Cong. Rec. Pt. 5, p. 5118-5122	24
76 Cong. Rec. (1933) Pt. 5, p. 5358	20
79 Cong. Rec. (1935) Pt. 12, p. 13301	21
79 Cong. Rec. (1935) Pt. 13, p. 13764	21
79 Cong. Rec. (1935) Pt. 13, p. 13767	21
G.L. (Ter. Ed.) c. 25, § 5	13
G.L. (Ter. Ed.) c. 159, § 16	13
G.L. (Ter. Ed.) c. 160, § 128	13
G.L. (Ter. Ed.) c. 160, §§ 128, 129	13
Interstate Commerce Act, Act Feb. 1920	14, 15
Interstate Commerce Act, Title 49, c. 1	18
Judicial Code, sec. 65	25
11 U.S.C.A. § 205, pp. 1040, 1041	24

Supreme Court of the United States.

October Term, 1938.

No. 685.

In the Matter of

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, *Debtor.*

HOWARD S. PALMER et al.,
Petitioners,

v.

THE COMMONWEALTH OF MASSACHUSETTS,
Respondent.

BRIEF FOR THE RESPONDENT.

THE CASE.

The case comes before this Court upon certiorari to the Circuit Court of Appeals for the Second Circuit on the petition of Howard S. Palmer and others, Trustees in operation of the properties of the New York, New Haven and Hartford Railroad Company and of the Old Colony Railroad Company, respectively, in railroad reorganization proceedings under Section 77 of the Bankruptcy Act (11

U.S.C. 205) (R. 109). The petitioners seek to have affirmed an order of the District Court for the Connecticut District authorizing the abandonment of passenger service at eighty-eight Massachusetts stations which was reversed on appeal by the Circuit Court of Appeals (R. 87).

The opinions in the Circuit Court of Appeals are reported *sub nom. Converse* v. *Commonwealth of Massachusetts* in 101 Fed. (2) 48. They appear in the present record at pp. 101-108. The findings and order of the District Court are not in the official reports. They appear in the record at pp. 22-27.

THE ISSUE.

The single question now raised is whether the United States District Court in Connecticut, sitting as a court of bankruptcy in railroad reorganization proceedings under Section 77 of the Bankruptcy Act (11 U.S.C. 205), had authority, prior to adoption of a plan of reorganization, without the concurrence of the Interstate Commerce Commission, to authorize discontinuance of passenger service at stations in Massachusetts upon lines which the debtor railroad continues to operate for freight service, notwithstanding the pendency of proceedings for discontinuance of such passenger service instituted by the trustees of the debtor railroad before the Massachusetts Department of Public Utilities.

THE FACTS.

The facts are adequately stated in the petitioners' brief (Petitioners' Brief, pp. 1-8). The respondent concedes that there was evidence to support the District Judge's primary findings (R. 23-25; Petitioners' Brief, pp. 4, 5) without, however, conceding that his conclusions (R. 25-27; Petitioners' Brief, pp. 5, 6) were in whole justified. The respondent particularly disputes the conclusion that failure to grant the relief asked for would result in confiscation, a conclusion from which the Circuit Court of Appeals itself dissented (R. 103, 104).

The Railroad Lines Involved.

The railroad lines involved are shown on a plan, Exhibit 1 (R. 76A).

The Old Colony Railroad (whose lines are shown in red) consists of approximately 575 miles of road. Its principal lines are from Boston southerly to Braintree, whence there are three branches, one along the South Shore to Plymouth, another *via* Whitman to Plymouth, and a third *via* Middleboro to Buzzards Bay at the entrance to Cape Cod, whence the road has two branches, one extending the entire length of Cape Cod to Provincetown and the other proceeding southerly to Falmouth and Woods Hole. The Old Colony also has lines from Lowell and Fitchburg in northern Massachusetts converging at Framingham Centre and thence proceeding southeasterly to Myricks, whence it branches to Fall River and to New Bedford (R. 44, 45; Exh. 1, R. 76A).

The Boston and Providence Railroad (whose lines are shown in yellow) has fifty-eight miles of line and constitutes the main line of the New York, New Haven and Hartford

system between Boston and Providence (R. 44, 45; Exh. 1, R. 76A).

The New England lines owned by the New Haven Railroad subject to the lien of the New England Railroad Company Consolidated Mortgage (R. 11, par. 1 (a)) (whose lines are shown in green) consist of two segments, one extending from Boston southwesterly through Readville, Franklin and Blackstone to East Douglas, the other originating a short distance east of Boston, passing through Needham Junction and thence southeasterly through Millis and Medway to Unionville (Exh. 1, R. 76A).

The eighty-eight stations at which passenger service is to be discontinued are enumerated in Exhibit B, R. 21. The order contemplates the entire discontinuance of passenger service on the Old Colony lines on Cape Cod east of Yarmouth and on a central segment from Winslows through Wrentham to Adamsdale Junction, and on the New England lines on two segments, one from Boston to Readville and one from Needham Junction to Unionville. Besides these lines which would be entirely abandoned for passenger service there are also numerous other stations at which passenger service will be discontinued although passenger trains will continue to run on the lines.

ARGUMENT.

UNDER SECTION 77 THE BANKRUPTCY COURT IS NOT VESTED WITH POWER TO AUTHORIZE ITS TRUSTEES TO DISCONTINUE PASSENGER SERVICE ON LINES WHICH THE RAILROAD CONTINUES TO RETAIN AND OPERATE FOR FREIGHT SERVICE PRIOR TO CONFIRMATION OF A PLAN OF REORGANIZATION APPROVED BY THE INTERSTATE COMMERCE COMMISSION.

Synopsis of Argument.

Section 77 concededly contains no express grant of power to the bankruptcy court to permit discontinuance or abandonment of public services upon retained lines. The petitioners are obliged to spell out such power from the general provisions of the Act conferring exclusive jurisdiction of the debtor and its property.

The power that is here asserted for the bankruptcy court is in effect the power to amend the railroad's charter. The bankruptcy court under such asserted power assumes to say to the railroad: "You may continue to operate under the franchises which the State has conferred upon you, but you need not perform the conditions upon which they were granted."

This is an extraordinary power, in derogation of the rights of the States and in violation of their charter-contracts. If Congress had intended to confer such power on the bankruptcy court it would doubtless have said so.

Congress did say, on the other hand, that a plan of reorganization may provide for "the amendment of the charter of the debtor" (subsection (b) (5), Appendix, *infra*, pp. 35, 36), and that after the plan is confirmed it shall be carried out notwithstanding orders of State authorities to the contrary (subsection (f), Appendix, *infra*, p. 38), but

this can be authorized only when the plan has first been approved by the Interstate Commerce Commission and certified to the Court (subsection (d), Appendix, *infra*, pp. 37, 38). And this condition is consistent with other provisions of the Act which make the Interstate Commerce Commission throughout rather than the Court the arbiter in questions affecting the conflicting interests of the railroad and the public.

The express terms of the statute, therefore, authorize the amendment of the railroad's charter and the superseding of the State authorities only as they are made an integral part of the plan of reorganization, first approved by the Interstate Commerce Commission.

The general powers conferred upon the Court, giving it jurisdiction of the debtor and its property and providing that its trustees shall have the powers of a trustee in bankruptcy or an equity receiver, are in every instance qualified by the condition that they be exercised consistently with the provisions of the statute (subsections (a) and (c) (2), Appendix, *infra*, pp. 35, 36).

Moreover, the powers of a receiver in equity are limited to the management and operation of the property according to the laws of the State in which it is situated; therefore a trustee with the power of such receiver cannot be authorized by the Court to abandon service on a branch line of a railroad which the State laws and authorities require it to operate.

The Act, therefore, contains neither express nor general language endowing the bankruptcy judge with plenary authority to discontinue unprofitable services while the railroad is in process of reorganization.

In presenting this argument we shall first examine the nature of the railroad's obligation to the State to operate as required by its charter, and the State's control over that obligation in the absence of Federal legislation displacing it; we shall then show that in Section 77 Congress did not vest control over abandonment of service in the bankruptcy court, save only as such abandonment should first receive the approval of the Interstate Commerce Commission as an integral part of the plan of reorganization.

1. A railroad holds its franchises from the State subject to the condition that it furnish the public service which was the object of the grant of the franchises. It cannot abandon the public service which was the condition upon which its franchises were granted and still retain them.

A railroad is a public utility, deriving its powers from the State from which it holds its corporate and secondary franchises. Such franchises, whether in mandatory or permissive terms, require the railroad to transport passengers and property for hire. There is implicit in them a condition that the railroad will furnish the public service which was the object of the grant.

New York Electric Lines Co. v. *Empire City Subway Co.*, 235 U.S. 179, 194:

Hughes, C.J.:

> ". . . it has always been recognized that, as the franchise is given in order that it may be exercised for the public benefit, the failure to exercise it as contemplated is ground for revocation or withdrawal. . . . It is a tacit condition annexed to grants of franchises that they may be lost by mis-user or non-user. . . ."

A railroad cannot, in the absence of express statutory provision or contract, be compelled by the State to continue operating its system at a loss when there is no reasonable prospect of future profit. If such case the railroad may, without the consent of the State, abandon all its lines within the State and surrender its franchises.

Brooks-Scanlon Co. v. *Railroad Commission of Louisiana*, 251 U.S. 396.

Bullock v. *Railroad Commission of Florida*, 254 U.S. 513.

Railroad Commission of Texas v. *Eastern Texas R.R. Co.*, 264 U.S. 79

Wolff Co. v. *Industrial Court*, 262 U.S. 522, 543:

Taft, C.J.:

"It is true that if operation is impossible without continuous loss . . . it may give up its franchise and enterprise, but *short of this, it must continue.*" (Italics supplied.)

But it has no right to abandon a part of its lines merely because operation thereof will be attended by a pecuniary loss, and still enjoy the privilege of operating its other lines.

Fort Smith Light & Traction Co. v. *Bourland et al., City Commissioners*, 267 U.S. 330, 332, 333:

Brandeis, J.:

". . . A public utility cannot, because of loss, escape obligations voluntarily assumed. . . . A railway may be compelled to continue the service of a branch or part of a line, although the operation involves a loss. . . . So far as appears, this company is at liberty to surrender its franchise and discon-

tinue operations throughout the city. It cannot, in the absence of contract, be compelled to continue to operate its system at a loss. . . . But the Constitution does not confer upon the company the right to continue to enjoy the franchise or indeterminate permit and escape from the burdens incident to its use."

United Fuel Gas Co. v. *Railroad Commission of Kentucky*, 278 U.S. 300, 309:

Stone, J.:

"The primary duty of a public utility is to serve on reasonable terms all those who desire the service it renders. This duty does not permit it to pick and choose and to serve only those portions of the territory which it finds most profitable, leaving the remainder to get along without the service which it alone is in a position to give. . . ."

Atlantic Coast Line v. *No. Carolina Corp. Commission*, 206 U.S. 1, 25.

Similarly, it cannot abandon a single service, such as passenger service on a branch line, continuing to operate the line for freight service, merely because the operation of the passenger service will result in a pecuniary loss.

Chesapeake & Ohio Railway Co. v. *Public Service Commission of West Virginia*, 242 U.S. 603, 607:

Van Devanter, J.:

". . . Thus, in legal contemplation, the branch line was devoted to the transportation of passengers as well as of freight, even though actually used only for the latter. An obligation to use it for both was imposed by law, and so could not be thrown off or ex-

tinguished by any act or omission of the railway company. . . .

"One of the duties of a railroad company doing business as a common carrier is that of providing reasonably adequate facilities for serving the public. This duty arises out of the acceptance and enjoyment of the powers and privileges granted by the State and endures so long as they are retained. It represents a part of what the company undertakes to do in return for them, and its performance cannot be avoided merely because it will be attended by some pecuniary loss. . . ."

Missouri Pacific Railway Co. v. *Kansas*, 216 U.S. 262, 277, 279:

White, J. (in sustaining a State order requiring a railroad to run a regular passenger train over its line instead of a mixed passenger and freight train):

". . . The fact that the performance of the duty commanded by the order which is here in question may, as we have conceded for the purpose of the argument, entail a pecuniary loss, is, of course; as declared in the *Atlantic Coast Line case* as a general rule, a circumstance to be considered in determining its reasonableness, as are the other criteria indicated in the opinion in that case. But where a duty which a corporation is obliged to render is a necessary consequence of the acceptance and continued enjoyment of its corporate rights, *those rights not having been surrendered by the corporation*, other considerations are in the nature of things paramount, since it cannot be said that an order compelling the performance of such duty at a pecuniary loss is unreasonable. To conclude to the contrary would be but to declare that

a corporate charter was purely unilateral, that is, was binding in favor of the corporation as to all rights conferred upon it and was devoid of obligation as to duties imposed, even although such duties were the absolute correlative of the rights conferred. . . ." (Italics supplied.)

And where a railway is being operated as part of a system under different corporate ownerships and franchises, the system as a whole can be compelled to operate the unprofitable service.

Puget Sound Traction Light & Power Co. v. *Reynolds,* 244 U.S. 574, 581.

2. Power to permit or deny abandonment of service on intrastate lines is reserved to the several States in the absence of Federal legislation displacing that power. This power is customarily exercised by regulatory commissions. In Massachusetts it is vested in the Department of Public Utilities, subject to judicial review.

The State which granted the railroad its franchises may of course permit it to abandon part of its lines or a single service, such as passenger service, retaining its lines for freight.

And the State may establish regulatory bodies vested with power to determine what constitutes reasonable service and what lines or service may be abandoned.

Atlantic Coast Line Railroad Co. v. *No. Carolina Corp. Commission,* 206 U.S. 1, 19:

White, J.:

". . . The elementary proposition that railroads from the public nature of the business by them carried on and the interest which the public have in their

operation are subject, as to their state business, to state regulation, which may be exerted either directly by the legislative authority or by administrative bodies endowed with power to that end, is not and could not be successfully questioned in view of the long line of authorities sustaining that doctrine."

Mississippi Railroad Commission v. *Mobile & Ohio R.R. Co.*, 244 U.S. 388, 390, 391:

Clarke, J.:

"A State may regulate the conduct of railways within its borders, either directly or through a body charged with the duty and invested with powers requisite to accomplish such regulation. . . :

"Under this power of regulation a State may require carriers to provide reasonable and adequate facilities to serve not only the local necessities but the local convenience of the communities to which they are directly tributary. . . . and such regulation may extend in a proper case to requiring the running of trains in addition to those provided by the carrier, even where this may involve some pecuniary loss. . . ."

Accord:

Missouri Pacific Railway Company v. *Kansas*, 216 U.S. 262, 276, 278, 279.

Chicago, Burlington & Quincy Railroad Co. v. *Railroad Commission of Wisconsin*, 237 U.S. 220, 226, 227.

Chesapeake & Ohio Railway Company v. *Public Service Commission of the State of West Virginia*, 242 U.S. 603, 607, 608.

Fort Smith Light & Traction Co. v. *Bourland et al., City Commissioners*, 267 U.S. 330, 333.

St. Louis-San Francisco Ry. Co. v. *Alabama Public Service Commission*, 279 U.S. 560.

In Massachusetts this power has been vested in the Department of Public Utilities, subject to judicial review. Massachusetts General Laws (Tercentenary Edition) c. 160, §§ 128, 129; c. 159, § 16; c. 25, § 5 (Appendix to this Brief, pp. 44-46).

The statute expressly forbids a railroad to abandon a passenger station without having first obtained the written approval of the Department after notice and a public hearing (§ 128, Appendix, p. 44).

For a State to require such proceedings, and continued operations while they are pending, does not conflict with the due process clause of the fourteenth amendment.

St. Louis-San Francisco Ry. Co. v. *Alabama Public Service Commission*, 279 U.S. 560.

Lawrence v. *St. Louis-San Francisco Ry. Co.*, 274 U.S. 588.

Western & Atlantic R.R. v. *Georgia Public Service Commission*, 267 U.S. 493, 496.

3. Up to the enactment of Section 77 there had been no Federal legislation displacing the States' power to permit or deny partial abandonment of service on lines retained by the railroads, although the Interstate Commerce Act conferred on the Commission power to authorize abandonment of lines and complete abandonment of operations.

Congress, with its paramount power over interstate commerce, has authority to direct the abandonment of intrastate service when its continuance imposes an undue burden on interstate commerce, and even the explicit provisions of the railroad's charter must yield to this authority.

Colorado v. *United States*, 271 U.S. 153, 165:

Brandeis, J.:

"'The exercise of federal power in authorizing abandonment is not an invasion of a field reserved to the

State. The obligation assumed by the corporation under its charter of providing intrastate service on every part of its line within the State is subordinate to the performance by it of its federal duty, also assumed, efficiently to render transportation services in interstate commerce. . . . But even explicit charter provisions must yield to the paramount power of Congress to regulate interstate commerce. *New York* v. *United States*, 257 U.S. 591, 605. Because the same instrumentality serves both, Congress has power to assume not only some control, but paramount control, insofar as interstate commerce is involved. It may determine to what extent and in what manner intrastate service must be subordinated in order that interstate service may be adequately rendered. The power to make the determination inheres in the United States as an incident of its power over interstate commerce. . . ."

Transit Commission v. *United States*, 284 U.S. 360, 369.

Congress, however, had not exercised its power over partial discontinuance of service as distinguished from complete abandonment.

The Interstate Commerce Act (Appendix hereto, p. 43), provides:

". . . no carrier by railroad subject to this chapter shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the commission a certificate that the present or future public convenience and necessity permit of such abandonment."

The Interstate Commerce Commission has repeatedly held that this does not confer upon the Commission power

to authorize partial discontinuance of rail service, such as the abandonment merely of passenger service on a branch line.

Public Convenience Application of K.C.S. Ry., 94 I.C.C. 691, 692:

"With respect to the proposed discontinuance of passenger and regular freight service over the air line and the Sugar Creek line, the record shows that the applicant will continue to operate these lines for intermittent freight service. Under the circumstances we are of the opinion that the proposed partial discontinuance of service is not an abandonment within the meaning of that term as used in paragraph (18) of section 1 of the act and that we are, therefore, without jurisdiction under that section to authorize such partial discontinuance of service. . . ."

Morris & Essex R.R. Co.—Proposed Abandonment, 175 I.C.C. 49, 52:

". . . as stated in our report in *Public Convenience Application of K.C.S. Ry.*, 94 I.C.C. 691, we have no jurisdiction over a partial discontinuance of rail service. Accordingly, the part of this application which covers the proposed abandonment of passenger service and the substitution of busses therefor is not a matter which in itself we are authorized to decide. . . ."

The Act (par. 17, Appendix, p. 43) specifically reserves the right of the States to require reasonable passenger service for intrastate business—

"*Provided, however,* That nothing in this chapter shall impair or affect the right of a State, in the exer-

cise of its police power, to require just and reasonable freight and passenger service for intrastate business, except insofar as such requirement is inconsistent with any lawful order of the commission made under the provisions of this chapter."

It is clear, therefore, that under the Interstate Commerce Act the right of the States over partial discontinuance of service as distinguished from complete abandonment remains unimpaired, with the single qualification that the orders of the State commissions may not impose obligations which conflict with the Commission's orders made within its field.

Gulf Colorado & Santa Fe Railway Co. v. *State of Texas*, 246 U.S. 58, 62.

St. Louis & San Francisco Ry. Co. v. *Public Service Commission of Missouri*, 254 U.S. 535.

Colorado v. *United States*, 271 U.S. 153, 165.

Transit Commission v. *United States*, 284 U.S. 360, 369.

4. Section 77 as a whole manifests the clear intent that the Interstate Commerce Commission rather than the bankruptcy court is to be the arbiter as between conflicting interests of the railroad and the public, and that partial abandonment of service is authorized only as a part of the reorganization plan, after having received the Commission's approval.

Section 77 applies solely to railroads engaged in interstate commerce and therefore subject to the provisions of the Interstate Commerce Act.

The section, as we have already stated, contains no express provisions dealing with discontinuance or abandonment of service as such.

As the Act was originally enacted it contained no provisions for sale or abandonment of lines or parts of lines prior to confirmation of the plan of reorganization.

By amendment,* subsection (c) (6) was inserted providing for the operation of leased lines where the lease has been rejected (as the lease of the Old Colony was in the present case). That section provides that if the lessee (in this case the New Haven) elects not to operate the leased line, it shall be the duty of the lessor (the Old Colony) to begin such operation, unless the judge, upon the petition of the lessor, decrees after hearing that it would be impracticable and contrary to the public interest for the lessor to operate it, in which event it shall be the duty of the lessee (the New Haven) to continue operation on or for the account of the lessor "*until the abandonment of such line is authorized by the Commission in accordance with the provisions of section (1) of Title 49*" (Appendix, *infra*, pp. 36, 37). Under this section, therefore, operation of the leased line must be continued until its abandonment is authorized by the Interstate Commerce Commission. While the Court determines as between lessor and lessee which shall operate the road, no authority is given to the Court to say that it shall not be operated.

Also, by amendment, subsection (o) provides that the trustees shall determine what lines or portions of lines and what other property of the railroad, if any, should be abandoned or sold during the pendency of the proceedings without unduly or adversely affecting the public interest, and shall present their petitions to the judge for authority to

*Subsections (c). (6) and (o), here discussed, were added in response to the recommendation of the Federal Co-ordinator of Transportation that "Minor amendments are necessary, designed to facilitate the abandonment of unremunerative branches of service" (74th Congress, House Doc. 89). As the discussion indicates, this recommendation was given effect only in so far as abandonment of service meant outright abandonment or sale of the lines themselves.

abandon or sell such property, whereupon, after hearing, the judge may authorize any such abandonment or sale, "*but only with the approval and authorization of the Commission when required by chapter 1 of Title 49, as amended . . .*" (Appendix, *infra*, pp. 39, 40). So far as this section relates to lines or portions of lines as distinguished from other property of the debtor, approval and authorization of the Commission are required by chapter 1 of Title 49 (the Interstate Commerce Act; Appendix, *infra*, p. 43). Under this section, therefore, the abandonment and sale of lines, carrying with it abandonment of operations, can be authorized by the Court only when first approved and authorized by the Interstate Commerce Commission.

There are no other provisions of the statute having to do with abandonment of lines or operations prior to the confirmation of the plan of reorganization.

Section 77 contains no express provision that even the plan of reorganization may provide for discontinuance of service on retained lines. The section does, however, contain provisions from which it is inferable that the plan of reorganization may make provisions for such discontinuance of service.

So subsection (b) (5) provides that the plan may provide for the retention or the sale of all or any part of the debtor's property, "*the amendment of the charter of the debtor,*" "and may deal with all or any part of the property of the debtor . . . and may include any other appropriate provisions not inconsistent with this section". (Appendix, *infra*, pp. 35, 36). Authority to amend the debtor's charter would seem to embrace authority to provide for the discontinuance of passenger service which the charter requires.

Subsection (f) provides that upon confirmation of the plan it shall be put into effect, "the laws of any State or

the decision or order of any State authority to the contrary notwithstanding" (Appendix, *infra*, p. 38). Then, and then only, under the Act, is the "State authority" superseded.

Assuming this to be so, every plan for reorganization must be submitted to the Interstate Commerce Commission, which shall "hold public hearings, at which opportunity shall be given to any interested party to be heard" and the Commission shall report whether the plan "*will be compatible with the public interest.*" Finally, "*no plan shall be approved or confirmed by the judge in any proceeding under this section unless the plan shall first have been approved by the Commission and certified to the court*" (subsection (d); Appendix, *infra*, pp. 37, 38).

It therefore follows that authority to amend the debtor's charter by relieving it from the obligation to furnish passenger service cannot be exercised by the judge except as it is part of the reorganization plan first approved by the Commission and certified to the Court.

The Congressional debates upon both the original statute and the 1935 amendment support this interpretation of the section.

Senator Hastings of Delaware, 76 Cong. Rec. (1933) Pt. 5, p. 5108:

> "Mr. President, as I said a moment ago, it seemed to me the onl thing left for us seriously to consider is whether or not the public interests are properly protected under the bill. I am quite certain, with all the authority we have given to the Interstate Commerce Commission, whose duty it is, of course, to see to it that the public interests are protected, that we have gone as far as it is possible to go in that direction. It seems

to me it is not possible for any person to complain that under the terms of the bill the public interests are not being properly taken care of."

P. 5110:

"It is urged that in many instances applications made to a court might be made to a judge who has had no experience whatever in railroad matters, but who would be dependent entirely upon interested railroad officials in determining what he should do and whether the plan was a good plan or whether it was not a good plan. I was finally convinced, in order that the public might be made safe always and that other persons interested in the railroad might be made safe, that it was perhaps, after all, a wise thing to submit the plan to the Interstate Commerce Commission. . . ."

Rep. LaGuardia of New York, 76 Cong. Rec. (1933) Pt. 5, p. 5358:

"Of course the law does not go as far as I would like to see it go. I would like to see the entire reorganization taken from the courts and placed in the Interstate Commerce Commission. There is a division of opinion whether we can legally and constitutionally do this . . . We had to submit to the majority views on this question, but we did put the absolute power and the final word—let there be no mistake about this—in the hands of the Interstate Commerce Commission, and have so tied it that the Court cannot amend, can not alter, can not modify a reorganization plan. The approval of the Interstate Commerce Commission of the plan is essential and indispensable."

Rep. McLaughlin of Nebraska, 79 Cong. Rec. (1935) Pt. 12, p. 13301:

> "Perhaps the outstanding beneficial feature of this whole legislation is the protection afforded the public, the railroads, railroad employees, and those interested as holders of railroad securities, by the double check of the necessity of approval of the plan of reorganization by both the Interstate Commerce Commission and the court."

Senator Wheeler of Montana, 79 Cong. Rec. (1935) Pt. 13, p. 13764:

> "Sec. 77 . . . brought the Interstate Commerce Commission into the active development of plans, enabling a proper consideration of the public interest. . . . The Federal judges have been notoriously derelict by reason of their failure to scrutinize reorganization plans."

Senator Hastings of Delaware, 79 Cong. Rec. (1935) Pt. 13, p. 13767:

> ". . . Congress is undoubtedly giving to the courts and to the Interstate Commerce Commission very great power.
>
> "In this particular instance there is a double check. It is necessary to have the approval of the Interstate Commerce Commission and the approval of the district judge before whom the matter is being tried, and then there is always the right of appeal to the circuit court."

It is argued by the petitioners, following the reasoning of the dissenting judge below, that since upon confirmation

of the plan the debtor shall put it into effect "the laws of any State or of decision or order of any State authority to the contrary notwithstanding," it is to be implied that prior to confirmation of the plan the laws of the State and the decisions and orders of its authorities are not controlling (Petitioners' Brief, pp. 12, 13; dissenting opinion below, R. 108). This argument overlooks the essential requirement which we have just discussed, that the Interstate Commerce Commission's approval is a prerequisite to this superseding of the State laws and authorities.

If the judge can discontinue the services prior to submission of the plan to the Interstate Commerce Commission, the Commission will be confronted with a *fait accompli* which clearly Congress did not intend. It was not the purpose of Congress that the judge should present to the Interstate Commerce Commission a body already mutilated.

This is unquestionably the interpretation of the statute which is most compatible with the public interest.

This was clearly realized by the majority judges, who wrote, through Circuit Judge Learned Hand:

> ". . . But we cannot see why, merely because the road may in the end be reorganized, the judge should be able to dispense with those conditions which the state has imposed upon the grant that alone makes lawful any operation of the road whatever. . So to construe the language of subdivisions (c) and (o) is to make him the tribunal to weigh and decide between the conflicting interests of the owners and the public. The notion behind the regulation of public utilities by specially qualified officials is that a judge is not qualified for such duties—at least in the first instance, or until the facts have been sifted and arranged. Assuming that a bankruptcy act might constitutionally

> go that far, only inescapable language could justify our imputing to Congress the intent to confer so extreme and unnecessarily provocative a power. . . ." (R. 105).

The petitioners ask the Court to attach significance to the fact that Section 77B, providing for corporate reorganizations, provides that, if the corporation is a *utility* subject to the jurisdiction of one or more State regulatory bodies, the plan of reorganization shall not be confirmed until such State bodies have given it their approval (Section 77B, subsections (e) (2) and (f); Appendix, *infra*, pp. 40, 41). From this it is argued that Section 77, dealing with railroads, by omitting any mention of the State regulatory bodies, intends to remove the railroads from their jurisdiction both before and after confirmation of the reorganization plan (Petitioners' Brief, pp. 13, 14; dissenting opinion below, R. 107).

To this we reply that Section 77B proceeds on the same theory as Section 77, that in all questions affecting the conflicting interests of the utility and the public the arbiter is to be the board of "specially qualified officials" (majority opinion below, at R. 105), rather than the bankruptcy judge: in the case of an interstate railroad it is the Interstate Commerce Commission; in the case of other public utilities it is the State Commission. In neither case is the bankruptcy judge alone vested with power to abolish or delimit the public service which the utility was chartered to perform.

The petitioners also ask the Court to attach significance to the fact that during the debate in the Senate Senator Hastings of Delaware proposed an amendment providing that "All existing laws relating to railroads or railways engaged in interstate commerce shall be applicable to any trustee appointed and operating a railroad or railway pursuant

to this action" (76 Cong. Rec. Pt. 5, p. 5118) and that subsequently the Senator withdrew his amendment (p. 5112). This, it is argued, proves that Congress intended that a trustee should not be governed by any State laws (Petitioners' Brief, p. 24).

Examination of the debate refutes any such inference. Senator Norris of Nebraska had introduced an amendment providing that no judge or trustee should change the wages or working conditions of employees except as prescribed in the railroad labor act or the memorandum of agreement entered into in Chicago January 31, 1932, between the executives of 21 labor organizations and a committee representing the railroads; that no judge or trustee should require any person seeking employment "to sign the so-called yellow-dog contract," etc. (p. 5118).

Senator Hastings promptly offered his amendment as a substitute (p. 5118) and the debate turned on the question whether the general provisions of the substitute accomplished the purposes of the original (pp. 5118-5122). Senator Norris finally agreed to eliminate the "yellow-dog" expression, which was offensive to Senator Hastings, whereupon the latter withdrew his substitute amendment (p. 5122). Senator Norris's amendment was then adopted (as subsections (o), (p) and (q) [historical note, 11 U.S.C.A. § 205, pp. 1040, 1041]).

Certainly it cannot be argued from this episode that Congress intended to permit the bankruptcy judge to relieve a railroad from the duty of furnishing the service required under its charter as determined by the State Commission.

We conclude, therefore, that the specific provisions of the statute negative any grant of authority to the bankruptcy judge acting alone to authorize the discontinuance of passenger services upon lines which are retained and operated for freight service by the railroad.

5. The general powers conferred by Section 77 upon the bankruptcy court do not embrace authority to oust State regulatory bodies from their jurisdiction to determine what services if any the railroad may abandon, pending confirmation of the reorganization plan.

Section 77 (a) confers upon the court "exclusive jurisdiction of the debtor and its property wherever located," and provides that the court "shall have and may exercise in addition to the powers conferred by this section all the powers, *not inconsistent with this section,* which a Federal court would have had if it had appointed a receiver in equity of the property of the debtor for any purpose" (Appendix, *infra,* p. 35).

Section 77 (c) (2) provides that the trustees "shall have all the title and shall exercise, subject to the control of the judge and *consistently with the provisions of this section,* all of the powers of a trustee appointed pursuant to section 72 [*i.e.,* a trustee in bankruptcy] or any other section of this title, and, *to the extent not inconsistent with this section,* if authorized by the judge, the powers of a receiver in an equity proceeding, and, subject to the control of the judge and the jurisdiction of the Commission as provided by chapter 1 of Title 49 as on August 27, 1935, or thereafter amended, the power to operate the business of the debtor. . . ." (Appendix, *infra,* p. 36).

Congress has therefore restricted every grant of power by the condition, thrice repeated, that its exercise shall not be inconsistent with the other provisions of the statute.

If our conclusion under point (4) (*supra,* p. 24) is sound, then it is "inconsistent with this section" for the court by itself to authorize the trustees to abandon passenger service. Further, the grant of "power *to operate* the business of the debtor" does not connote the power *to cease to operate.*

The power of a receiver in equity proceedings, under the long-settled policy of Congress, as provided by section 65

of the Judicial Code (Appendix, *infra*, p. 42), is limited to management and operation of the property "according to the requirements of the valid laws of the state in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof." The majority judges below observed this, stating:

> "The powers of trustees in reorganization are, to some degree at any rate, measured by those of receivers in equity (subd. (e), 11 U.S.C.A. § 205 (c) (2)), and it has been long the settled policy of Congress to subject receivers in their management of the properties in their custody to the laws of the states, § 124 Title 28, U.S. Code, 28 U.S.C.A. § 124. . . ." (R. 105, 106).

This principle that the receiver must comply with the State laws has received frequent application, in one instance in a case exactly in point.

> *Pittsburgh & Shawmut Coal Co.* v. *Delaware & N. R. Co.*, 289 Fed. 133 (Dist. Ct. N.D. N.Y. 1923).

In holding that the court might not authorize its receiver to abandon a branch line of a railroad, Cooper, Dist. J., said, pp. 135, 136:

> ". . . For this court to permit its receiver to abandon this Andes branch, while the remainder of the railroad continues to be operated by the receiver, would be for the court, without the consent of the state, to alter or modify the corporate charter or franchise granted by the state, and to release the railroad from some of its obligations, which turned out to be undesirable and burdensome, while retaining the desirable ones. . . .
>
> "The application must be denied."

International & Great Northern Ry. Co. v. *Anderson County*, 246 U.S. 424.

(Statutory duty to maintain offices at a particular place.)

Erb v. *Morasch*, 177 U.S. 584:

(Regulation of speed of trains within city limits.)

Gillis v. *California*, 293 U.S. 62:

The receiver of a company producing and selling gasoline was held to be bound by a statute requiring a dealer to have a license and give a surety bond for payment of taxes.

Mercantile Trust Co. v. *Tennessee Central R. Co.*, 286 Fed. 425, 427 (Dist. Ct. Tenn. 1922):

(Statute providing that damages resulting from railroad operations should be given priority over mortgages.)

Gas & Electric Securities Co. v. *Manhattan & Queens Track Corp.*, 253 Fed. 453 (Dist. Ct. East. Dist. N.Y. 1918):

(Railroad's franchise fixing maximum rate of fare.)

United States & Mexican Trust Co. v. *Kansas City, M. & O. Ry. Co.*, 240 Fed. 505 (Dist. Ct. D. Kan. 1917):

(State commission's order reducing rates.)

General Finance Corporation v. *New York State Rys.*, 54 Fed. (2) 1008, 1010 (C.C.A. 2d 1932), *semble.*

Commonwealth v. *Felton*, 107 Ky. 330, 53 S.W. 1046:

(Regulation requiring maintenance of toilet facilities in stations.)

Brotherhood of Locomotive Firemen & Enginemen v. *Mobile & Ohio Ry. Co.*, 362 Ill. 122, 199 N.E. 283:

(Regulation requiring maintenance of switch lights.)

Sullivan v. *Hustis*, 237 Mass. 441, 130 N.E. 247:

(Liability for personal injuries for failure to give signals as required by statute.)

Wall v. *Platt*, 169 Mass. 398, 48 N.E. 270:

(Liability for damages caused by fire from locomotive.)

A court of equity, of course, has power to protect the property in its custody from invasion or destruction.

In re Tyler, 149 U.S. 164, 181.
Continental Bank v. *Rock Island Railway Co.*, 294 U.S. 648, 675.
Isaacs v. *Hobbs Tie & Timber Co.*, 282 U.S. 734.

But where the State has provided a regulatory commission vested with authority to determine such matters, and particularly where, as here, the trustees had already invoked its jurisdiction, the court's power to protect the property does not permit it to prevent or forestall the decision of the State commission.

This is the more apparent where, as here, Congress has provided that the Court's decree shall supersede the or-

ders of the State authorities only after confirmation of the plan of reorganization (Brief, *supra*, pp. 18, 19).

The administrative remedy provided by the State cannot be circumvented by holding that the prescribed hearing would result in irreparable damage.

Myers v. *Bethlehem Corp.*, 303 U.S. 41, 50, 51 (and cases cited):

Brandeis, J.:

"... The contention is at war with the long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted. . . .

"Obviously, the rule requiring exhaustion of the administrative remedy cannot be circumvented by asserting that the charge on which the complaint rests is groundless and that the mere holding of the prescribed administrative hearing would result in irreparable damage. . . ."

Accord:

Lawrence v. *St. Louis-San Francisco Ry. Co.*, 274 U.S. 588, 595.

Western & Atlantic R.R. v. *Georgia Public Service Commission*, 267 U.S. 493, 496.

Henderson Water Co. v. *Corporation Commission*, 269 U.S. 278.

In this principle lies the answer to the reasoning of the dissenting judge below that "The district judge has found that no plan could be confirmed unless the proposed reduction of service were made, and that the failure to grant the relief asked would result in confiscation. These findings are not challenged. Hence, enforcement of an order by the state commission refusing the proposed reduction of service

could be enjoined. . . . Under such circumstances, at least, it would seem reasonable to hold that the court of bankruptcy has jurisdiction to protect the res within its custody by curtailing a confiscatory service" (R. 108).

This reasoning, moreover, overlooks the consideration that the State commission might, while agreeing that the service as a whole would be confiscatory, nevertheless find that a partial or reduced service was required as a matter of public convenience and necessity, the cost of which would not in itself be confiscatory.*

If the State administrative body should in effect abdicate, by refusing to take any action whatever upon the receiver's petition, it might justify the court in taking jurisdiction upon this ground.

Crawford v. *Duluth Street Railway*, 60 Fed. (2) 212 (C.C.A. 7th, 1932), relied upon by the petitioners (Petitioners' Brief, pp. 20, 21) may be so explained (majority opinion below, R. 104).

In that case the receiver of a railway company filed a petition in the District Court for authority to abandon operations on certain branch lines, alleging that he had "presented to the mayor and council [the State regulatory body] his petition for permission to discontinue operations . . . that no action has been taken on the receiver's petition; that the mayor and council do not intend to act on the petition either by granting or refusing it; and that the

---

*The Department of Public Utilities did in fact on July 28, 1938, find that public convenience and necessity require the operation of a gas-electric rail car on all week-days from Yarmouth to Provincetown in the morning and return in the afternoon, stopping for passengers at Yarmouth, South Dennis, Harwich, Brewster, Orleans, Eastham, Wellfleet, North Truro and Provincetown, finding that this limited passenger service does not exceed the financial ability of the carrier, precarious as it is.

Orders with respect to other lines have been withheld, under the terms of the Order of the Circuit Court of Appeals staying the mandate.

effect of the refusal is that the receiver must continue to operate the whole Superior division at a loss unless relieved by the court" (p. 213, first column). The State and city did "not dispute the facts averred in the petition. They seek a reversal solely upon the ground that, upon the admitted facts, the District Court was without authority to authorize the abandonment" (p. 213, second column). It was held that the court had jurisdiction to determine whether "the action of the city council . . . in withholding consent to the abandonment of the branch line [was] arbitrary and unreasonable" (p. 215, par. 5).

The action of the Massachusetts Department of Public Utilities in the case at bar presents no analogous situation (Stipulation, R. 76). As stated in the majority opinion below:

> ". . . However that may be, on July 9, 1938, there was as yet no warrant for saying that the Department had so delayed the proceeding before it as to show that it meant to evade any decision. Respect for it, and for the Commonwealth, required that it should be allowed to proceed as in other cases: only a power in substance the equivalent of the power to issue a writ of prohibition could justify prejudging the merits, however plain they may be" (R. 104):

If the State, instead of providing a regulatory commission, vests authority in the State courts, it may be that the Federal courts exercising concurrent jurisdiction are vested with like authority.

Iowa v. *Old Colony Trust Co.*, 215 Fed. 307 (C.C.A. 8th, 1914), relied upon by the petitioners (Petitioners' Brief, pp. 21, 22, 26), may be so explained (majority opinion below, R. 106).

In that case the State statute provided that a railroad desiring to relocate, change or remove its line should file a petition in the State court. There were mortgage fore-

closure proceedings in which a receiver was appointed in the Federal court. That court permitted its receiver to abandon a part of the road. The majority opinion below in discussing the case said (R. 106):

> ". . . The statutes of Iowa provided a proceeding in a state court for that purpose and the railroad substituted for this an ancillary petition in a foreclosure suit. We assume that the court allowed the road to do this under the doctrine that, when once a court has taken custody of a res, it will draw to itself all litigation touching it. That doctrine may properly be made to cover all litigation cognizable by state courts, even though it concern the fulfillment of charter conditions. It is of the essence of the jurisdiction for diverse citizenship that federal courts shall be deemed the equivalent of state. But when the state has set up a specialized tribunal, not judicial, at all, the federal court is not a substitute for it, and may not displace it."

But see, defending the state court's jurisdiction:

> *International & Great Northern Ry. Co.* v. *Anderson County*, 246 U.S. 424, 431.
>
> Cf. *Myers* v. *Bethlehem Corp.*, 303 U.S. 41, 50, 51 (quoted Brief, *supra*, p. 29).

The petitioners also argue that the accumulation of the deficit during the pendency of reorganization proceedings would itself result in confiscation and prevent the reorganization of the railroad, upon the findings of the bankruptcy judge (R. 25, 26), and that for this reason the court had jurisdiction to make the order.

The failure of the evidence and findings to support such a drastic conclusion was noted in the majority opinion below (R. 103, 104):

> ". . . We could feel some force in this argument, if

the judge had found that it would defeat any plan which could be devised to let the deficit accumulate during the period while the Department might be considering the case, and while its order, if unfavorable, was being reviewed. But he did not so find: all he said was that no plan could go through which did not cut off the service in question; and that is quite different from saying that an added indebtedness at the rate of $660,000 a year, for what could scarcely be more than a year, would balk all possible plans. That is most unlikely, and if the trustees meant to assert it, they should have proved it. Nothing in the testimony of the expert, Cunningham, went so far; nor did the finding that 'the emergency now existing on these lines will not permit of the delay and uncertainty inherent in such a programme.' "

If there existed danger of confiscation from continuous operating losses, it was attributable not to the delay of the Department of Public Utilities in hearing the trustees' petition, but to the inability of the trustees to formulate, with the promptitude contemplated by Congress, an acceptable reorganization plan.

One of the main purposes of Section 77 was to provide a method for expeditious reorganization.

Continental Illinois National Bank & Trust Co. v. *Chicago, Rock Island & Pacific Ry. Co.*, 294 U.S. 648, 685:

Sutherland, J.:

"The delay and expense incident to railroad receiverships and foreclosure sales constituted, probably, the chief reasons which induced the passage of § 77; . . . Not only are those who institute the proceeding and those who carry it forward bound to exercise the highest degree of diligence, but it is the

duty of the court and of the Interstate Commerce Commission to see that they do. . . ."

By amendment, subsection (d) provided that the debtor should file its plan of reorganization within six months of the approval of the petition as properly filed, "and not thereafter unless such time is extended by the judge from time to time for cause shown, no single extension at any one time to be for more than six months" (Appendix, *infra*, p. 37).

The New Haven Railroad has been in reorganization proceedings since October 3, 1935, a period of four years. Congress clearly did not contemplate that a railroad should be operated for four years or more under the benevolent protectorate of a bankruptcy judge, endowed with plenary authority to discontinue unprofitable services.

We conclude, therefore, that the powers conferred upon the bankruptcy court do not embrace authority to oust the Massachusetts Department of Public Utilities from its jurisdiction already invoked by the trustees to determine what services, if any, the railroad may abandon, prior to confirmation of a reorganization plan providing for such abandonment with the approval of the Interstate Commerce Commission.

Conclusion.

It is respectfully submitted that the decision of the Circuit Court of Appeals for the Second Circuit should be affirmed and its mandate, hitherto stayed, issue to the District Court of Connecticut.

COMMONWEALTH OF MASSACHUSETTS,
PAUL A. DEVER,
Attorney General,
EDWARD O. PROCTOR,
Assistant Attorney General.

Appendix.

MATERIAL PROVISIONS OF THE STATUTES.

UNITED STATES STATUTES.

Section 77(a) of the Bankruptcy Act, 11 U.S.C.A. §205(a):

"* * * If the petition is so approved, the court in which such order is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located, and shall have and may exercise in addition to the powers conferred by this section all the powers, not inconsistent with this section, which a Federal court would have had if it had appointed a receiver in equity of the property of the debtor for any purpose. * * *"

Section 77(b), 11 U.S.C.A. §205(b):

"A plan of reorganization within the meaning of this section * * * (5) shall provide adequate means for the execution of the plan, which may include the transfer of any interest in or control of all or any part of the property of the debtor to another corporation or corporations, the merger or consolidation of the debtor with another corporation or corporations, the retention of all or any part of the property by the debtor, the sale of all or any part of the property of the debtor either subject to or free from any lien at not less than a fair upset price, the distribution of all or any assets, or the proceeds derived from the sale thereof, among those having an interest therein, the satisfaction or modification of any liens, indentures, or other similar interests, the curing or waiver of defaults, the extension of maturity dates of outstanding securities, the reduction in principal and/or rate of interest and alter-

ation of other terms of such securities, the amendment of the charter of the debtor, and/or the issuance of securities of either the debtor or any such other corporation or corporations for cash, or in exchange for existing securities, or in satisfaction of claims or rights or for other appropriate purposes; and may deal with all or any part of the property of the debtor; may reject contracts of the debtor which are executory in whole or in part, including unexpired leases; and may include any other appropriate provisions not inconsistent with this section.

Section 77(c)(2), 11 U.S.C.A. §205(c)(2):

"* * * The trustee or trustees so appointed, upon filing such bond, shall have all the title and shall exercise, subject to the control of the judge and consistently with the provisions of this section, all of the powers of a trustee appointed pursuant to section 72 or any other section of this title, and, to the extent not inconsistent with this section, if authorized by the judge, the powers of a receiver in an equity proceeding, and, subject to the control of the judge and the jurisdiction of the Commission as provided by chapter 1 of Title 49 as on August 27, 1935, or thereafter amended, the power to operate the business of the debtor. * * *"

Section 77(c)(6), 11 U.S.C.A. §205(c)(6):

"If a lease of a line of railroad is rejected, and if the lessee, with the approval of the judge, shall elect no longer to operate the leased line, it shall be the duty of the lessor at the end of a period to be fixed by the judge to begin the operation of such line, unless the judge, upon the petition of the lessor, shall decree after hearing that it would be impracticable and contrary to the public interest for the lessor to operate the said

line, in which event it shall be the duty of the lessee to continue operation on or for the account of the lessor until the abandonment of such line is authorized by the Commission in accordance with the provisions of section 1 of Title 49."

Section 77(d), 11 U.S.C.A. §205(d):

"(d) The debtor, after a petition is filed as provided in subsection (a) of this section, shall file a plan of reorganization within six months of the entry of the order by the judge approving the petition as properly filed, or if heretofore approved, then within six months of August 27, 1935, and not thereafter unless such time is extended by the judge from time to time for cause shown, no single extension at any one time to be for more than six months. Such plan shall also be filed with the Commission at the same time. Such plans may likewise be filed at any time before, or with the consent of the Commission during, the hearings hereinafter provided for, by the trustee or trustees, or by or on behalf of the creditors being not less than ten per centum in amount of any class of creditors, or by or on behalf of any class of stockholders being not less than ten per centum in amount of any such class, or with the consent of the Commission by any party in interest. After the filing of such a plan, the Commission, unless such plan shall be considered by it to be prima facie impracticable, shall, after due notice to all stockholders and creditors given in such manner as it shall determine, hold public hearings, at which opportunity shall be given to any interested party to be heard, and following which the Commission shall render a report and order in which it shall approve a plan, which may be different from any which has been proposed, that will in its opinion meet with the require-

ments of subsections (b) and (e) of this section, and will be compatible with the public interest; or it shall render a report and order in which it shall refuse to approve any plan. In such report the Commission shall state fully the reasons for its conclusions.

"The Commission may, thereafter, upon petition for good cause shown filed within sixty days of the date of its order, and upon further hearings if the Commission shall deem necessary, in a supplemental report and order modify any plan which it has approved, stating the reasons for such modification. The Commission, if it approves a plan, shall thereupon certify the plan to the court together with a transcript of the proceedings before it and a copy of the report and order approving the plan. No plan shall be approved or confirmed by the judge in any proceeding under this section unless the plan shall first have been approved by the Commission and certified to the court."

Section 77(f), 11 U.S.C.A. §205(f):

"* * * Upon confirmation of the plan, the debtor and any other corporation or corporations organized or to be organized for the purpose of carrying out the plan, shall have full power and authority to, and shall put into effect and carry out the plan and the orders of the judge relative thereto, under and subject to the supervision and the control of the judge, the laws of any State or the decision or order of any State authority to the contrary notwithstanding * * *."

Section 77(j), 11 U.S.C.A. §205(j):

"In addition to the provisions of section 29 of this title for the staying of pending suits against the debtor, the judge may enjoin or stay the commencement or continuation of suits against the debtor until after

final decree; and may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree * * *."

Section 77(l), 11 U.S.C.A. §205 (l):

"In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and its property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed."

Section 77(o), 11 U.S.C.A. §205(o):

"The trustee or trustees, from time to time, shall determine what lines or portions of lines of railroad and what other property of the debtor, if any, should be abandoned or sold during the pendency of the proceedings in the interest of the debtor's estate and of ultimate reorganization, but without unduly or adversely affecting the public interest, and shall present to the judge petitions, in which other parties in interest may join, for authority to abandon or to sell any such property; and upon order of the judge made after a hearing pursuant to such reasonable notice by publication or otherwise as the judge may direct to parties in interest, authorizing any such abandonment or sale, but only with the approval and authorization of the Commission when required by chapter 1 of Title 49, as amended February 28, 1920, or as it may be hereafter amended, the trustee or trustees shall take all steps and carry out all proceedings necessary for the consummation of any such abandonment or sale

in accordance with the order of the judge. Any such order of the judge shall be a final order for the purposes of appeal. The judge may order and decree any sale of property, whether or not incident to an abandonment, under this subsection at public or private sale and subject to or free from liens. * * *"

Section 2 of the Bankruptcy Act, 11 U.S.C.A. §11:

"The courts of bankruptcy as defined in the previous chapter, namely, the district courts of the United States in the several States, * * * are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as established on July 1, 1898, or as they may be thereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms, as they were on July 1, 1898, or may be thereafter held, to * * * (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this title; * * *"

Section 77B(e)(2) of the Bankruptcy Act, 11 U.S.C.A. §207(e)(2):

"In case the debtor is a utility subject to the jurisdiction of a regulatory commission or commissions or other regulatory authority or authorities, created by the laws of the State or States in which the properties of the debtor are operated, a plan of reorganization shall not be confirmed until (a) it shall be submitted to each such commission or authority having regulatory jurisdiction over the debtor, (b) an opportunity shall be afforded each such commission or authority to suggest amendments or objections to the plan; and

(c) the judge shall consider such amendments or objections at a hearing at which each such commission or authority may be heard. In case the debtor is a public utility corporation wholly intrastate in character no court shall approve any plan of reorganization if the regulatory commission of such State having jurisdiction over such public utility certifies that the public interest is affected by said plan, unless said regulatory commission shall first approve of said plan as to the public interest therein and the fairness thereof. If said regulatory commission shall not within thirty days or such additional period as the court may prescribe after the submission of a plan to it file said certificate it shall be deemed that the public interest is not affected by said plan."

Section 77B(f) of the Bankruptcy Act, 11 U.S.C.A. §207(f):

"After hearing such objections as may be made to the plan, the judge shall confirm the plan if satisfied that * * * (7) the debtor, and every other corporation, issuing securities or acquiring property under the plan, is authorized by its charter or by applicable State or Federal laws, upon confirmation of the plan, to take all action necessary to carry out the plan, and that, in case the debtor is a utility corporation subject to the jurisdiction of a regulatory commission or commissions or other regulatory authority or authorities, created by the laws of the State or States in which the properties of the debtor are operated, all authorizations, approvals, or consents of each such commission or authority required by the laws of such State or States, have been obtained."

Section 65 of the Judicial Code, 28 U.S.C.A. §124:

"Whenever in any cause pending in any court of the United States there shall be a receiver or manager in possession of any property, such receiver or manager shall manage and operate such property according to the requirements of the valid laws of the State in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof. Any receiver or manager who shall wilfully violate any provision of this section shall be fined not more than $3,000, or imprisoned not more than one year, or both."

Section 66 of the Judicial Code, 28 U.S.C.A. §125:

"Every receiver or manager of any property appointed by any court of the United States may be sued in respect of any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which such receiver or manager was appointed; but such suit shall be subject to the general equity jurisdiction of the court in which such manager or receiver was appointed so far as the same may be necessary to the ends of justice."

Section 265 of the Judicial Code, 28 U.S.C.A. §379:

"The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

The Interstate Commerce Act, Act Feb. 1920, c. 91; 41 Stat. 474, §1 as amended, 49 U.S.C.A. §1:

"(17) * * * *Provided, however,* That nothing in this chapter shall impair or affect the right of a State, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except insofar as such requirement is inconsistent with any lawful order of the commission made under the provisions of this chapter."

"(18) * * * *abandonment of lines; certificate required.*—* * * no carrier by railroad subject to this chapter shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the commission a certificate that the present or future public convenience and necessity permit of such abandonment.

"(19) *Application for certificate of commission; notice and hearing.*—The application for and issuance of any such certificate shall be under such rules and regulations as to hearings and other matters as the commission may from time to time prescribe, and the provisions of this chapter shall apply to all such proceedings. Upon receipt of any application for such certificate the commission shall cause notice thereof to be given to and a copy filed with the governor of each State in which * * * all or any portion of a line of railroad, or the operation thereof, is proposed to be abandoned, with the right to be heard as hereinafter provided with respect to the hearing of complaints or the issuance of securities; and said notice shall also be published for three consecutive weeks in some newspaper of general circulation in each county in or through which said line of railroad is constructed or operates."

Section 128 of chapter 160 of the Massachusetts General Laws (Ter. Ed.):

> "A railroad corporation which has established and maintained a passenger station throughout the year for five consecutive years at any point upon its railroad shall not abandon such station, unless it is relocated under the following section, nor substantially diminish the accommodation furnished by the stopping of trains thereat as compared with that furnished at other stations on the same railroad, except with the written approval of the department after notice posted in and on said station for a period of thirty days immediately preceding a public hearing thereon."

Section 129 of chapter 160 of the Massachusetts General Laws (Ter. Ed.):

> "A railroad corporation may relocate passenger stations and freight depots, with the written approval of the department and of the board of aldermen of the city or the selectmen of the town where such stations or depots are situated."

Section 16 of chapter 159 of the Massachusetts General Laws (Ter. Ed.):

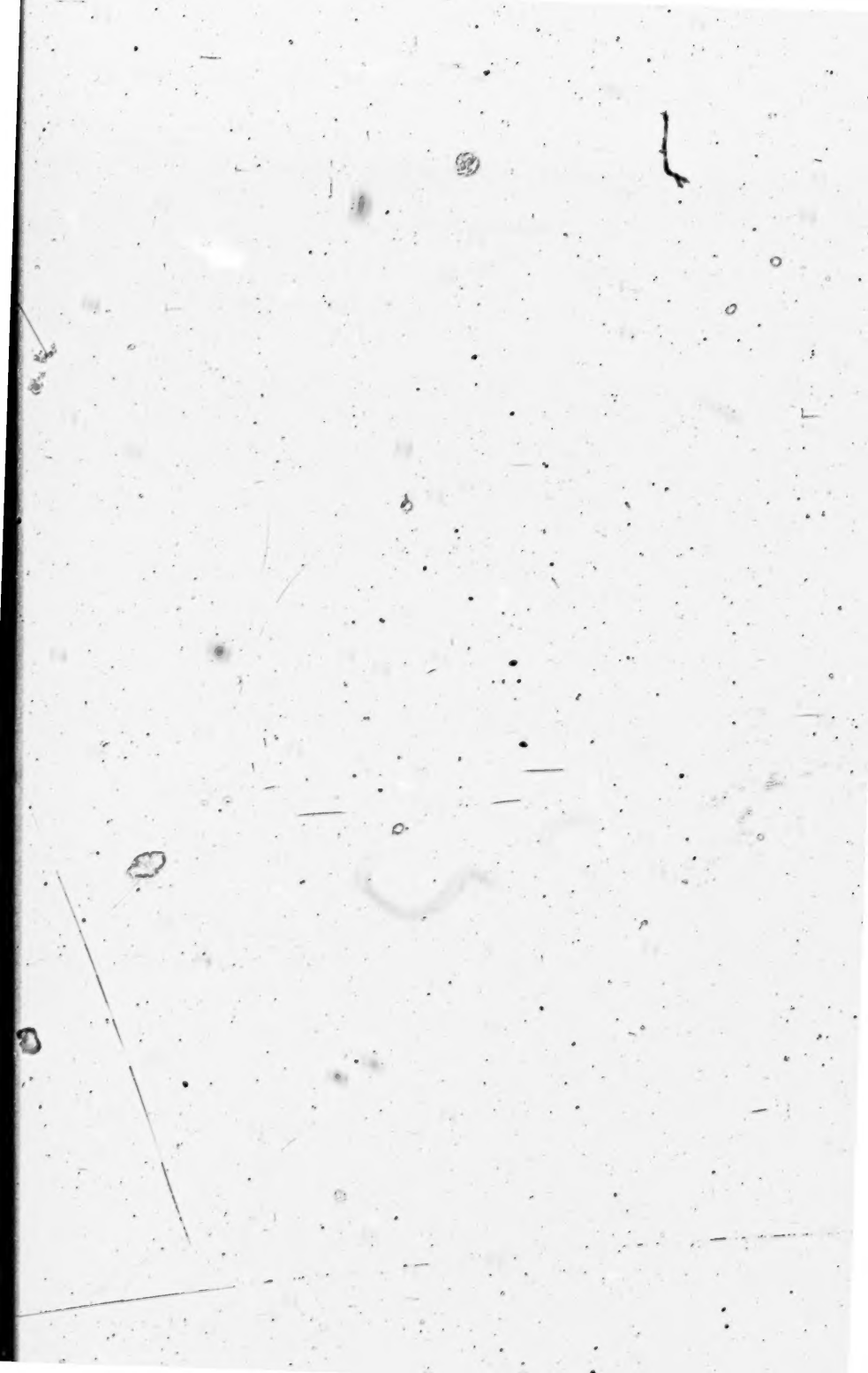
"If the department is of opinion, after a hearing had upon its own motion or upon complaint, that the regulations, practices, equipment, appliances or service of any common carrier are unjust, unreasonable, unsafe, improper or inadequate, the department shall determine the just, reasonable, safe, adequate and proper regulations and practices thereafter to be in force and to be observed, and the equipment, appliances and service thereafter to be used, and shall fix and prescribe the same by order to be served upon every common carrier to be bound thereby. The department may after such a hearing, order any railway company to build and operate any just and reasonable extensions of its lines for which it may have been or may be granted locations and order from time to time that a railroad company shall operate its lines, of standard gauge, or such parts thereof as the department shall prescribe, by electric power instead of steam power, and in its order shall prescribe the time within which the work of electrification shall be done. Before making such order, the department shall consider the relative importance and necessity of the changes in any specific regulations, practices, equipment and appliances proposed to be included therein and of other changes which may be brought to its attention in the course of the hearing, the financial ability of the carrier to comply with the requirements of the order, and the effect of the carrier's compliance therewith, upon its financial ability to make such other changes, if any, as may be deemed by the department of equal or greater importance and necessity in the performance of the service which the carrier has professed to render

to the public. Every such common carrier shall obey every requirement of every such order so served upon it, and do everything necessary or proper in order to secure absolute compliance with every such order by all its officers, agents and employees."

Section 5 of chapter 25 of the Massachusetts General Laws (Ter. Ed.):

"When so requested by any party interested, the commission, or any member or members acting for the commission, shall rule upon any question of substantive law properly arising in the course of any proceedings before the commission or any member or members thereof, and any party in interest aggrieved by such ruling may object thereto, and may secure a review thereof as hereinafter provided. Any failure or refusal of the commission, or of any member or members thereof acting for the commission, to rule upon such a question at the request of any party in interest as aforesaid within ten days after such request, shall be taken and recorded as a ruling adverse to the party requesting the ruling.

"The supreme judicial court shall have jurisdiction in equity to review, modify, amend or annul any ruling or order of the commission, or of any member or members representing the commission, but only to the extent of the unlawfulness of such ruling or order * * *."



FILE COPY

OCT 10 1939

Supreme Court of the United States.

OCTOBER TERM, 1939.

No. 685.

IN THE MATTER OF

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, DEBTOR.

HOWARD S. PALMER ET ALL.,

Petitioners,

v.

THE COMMONWEALTH OF MASSACHUSETTS,

Respondent.

MOTION AND BRIEF FOR THE INHABITANTS OF THE TOWN OF SCITUATE FILED AS AMICUS CURIAE,

By

VERNON W. MARR, *Counsel.*

ADDISON C. GETCHELL & SON, LAW PRINTERS, BOSTON.

Supreme Court of the United States.

OCTOBER TERM, 1939.

No. 685.

IN THE MATTER OF

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, DEBTOR.

HOWARD S. PALMER ET ALL.,
Petitioners,

v.

THE COMMONWEALTH OF MASSACHUSETTS,
Respondent.

MOTION BY THE INHABITANTS OF THE TOWN OF SCITUATE FOR PERMISSION TO FILE BRIEF AS AMICUS CURIAE.

Now come the Inhabitants of the Town of Scituate, a municipal corporation, being a political subdivision of the Commonwealth of Massachusetts, and respectfully move this Honorable Court for permission to file a brief as an amicus curiae in the above-entitled cause.

INHABITANTS OF
THE TOWN OF SCITUATE,

VERNON W. MARR,
Town Counsel.

Supreme Court of the United States.

October Term, 1939.

No. 685.

In the Matter of

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Debtor.

HOWARD S. PALMER et ali.,

Petitioners,

v.

THE COMMONWEALTH OF MASSACHUSETTS,

Respondent.

BRIEF FOR THE INHABITANTS OF THE TOWN OF SCITUATE FILED AS AMICUS CURIAE.

The Case.

The case comes before this Court upon certiorari to the Circuit Court of Appeals for the Second Circuit on the petition of Howard S. Palmer and others, Trustees in operation of the properties of the New York, New Haven and Hartford Railroad Company and of the Old Colony Railroad Company, respectively, in railroad reorganization proceedings under Section 77 of the Bankruptcy Act (11 U.S.C. 205) (R. 109). The petitioners seek to have affirmed an order of the District Court for the Connecticut District

authorizing the abandonment of passenger service at eighty-eight Massachusetts stations which was reversed on appeal by the Circuit Court of Appeals (R. 87).

The opinions in the Circuit Court of Appeals are reported *sub nom. Converse* v. *Commonwealth of Massachusetts* in 101 Fed. (2) 48. They appear in the present record at pp. 101-108. The findings and order of the District Court are not in the official reports. They appear in the record at pp. 22-27.

The Issue.

The question raised by your *amicus curiae* is whether or not the Interstate Commerce Commission should pass upon a discontinuance of the business of public carrier of passengers upon a railway line or a portion thereof before the Bankruptcy Court has authority to order termination of operation in present reorganization proceedings under the Bankruptcy Act.

The Facts (Especially Relevant to This Brief).

The Inhabitants of the Town of Scituate, otherwise known as the Town of Scituate, is a municipal corporation duly incorporated under the laws of the Commonwealth of Massachusetts, and it is a political subdivision thereof. Its interests are affected in the present cause.

(1) This Town has many year-round commuters to Boston and a very large summer population creating about three times as much passenger traffic in summer months as in January.

(2) Certain stations upon the so-called Boston and Greenbush Line of the Old Colony Railway are included in the list of stations discontinued, the existing Greenbush

terminal being in the Town of Scituate. There are three other stations still open in the Town: Scituate (Harbor), Egypt and North Scituate. Beechwood Station, which served the West End and the Beechwood section of Scituate and also part of Cohasset, is one of the abandoned stations.

(3) Relying upon the powers claimed under the Bankruptcy Laws in the present cause, the petitioner trustees of the New Haven Road, who are the trustees of the Old Colony Road, now propose discontinuance of all passenger transportation to all the Scituate stations, *i.e.*, from Hingham (17.2 miles out of Boston) down to Cohasset (21.7 miles) and Greenbush, the terminal (27.8 miles).

(4) A decision in the present cause adverse to the contentions and prayers of the respondent, Commonwealth of Massachusetts, would be adverse to the interests of the Inhabitants of the Town of Scituate. Even threatened loss of all passenger trains has injured property values and discouraged residence in this section called the South Shore. Scituate has eighteen daily trains at present (nine each way, with reduced service Saturdays and Sundays). This service is substantially the same the year round and has changed little in the past few years. In proper proceedings such extensive service may be found unprofitable and be curtailed to a reasonable extent.

(5) Labor interests everywhere are vitally concerned.

Argument.

Your *amicus curiae* respectfully submits that the petitioner trustees are relying upon an Interstate Commerce Commission ruling under which the Commission says it may decline to act; to wit: that abandonment of passenger

service while continuing freight service is not abandonment of "any portion of a line of railroad, or the operation thereof." See Interstate Commerce Act, par. (18), annexed.

This narrow construction of the Interstate Commerce Act by the Commission no doubt saves them much added work, but it does not save a railway passenger line or distinguish it from a freight line.

Steel rails and roadbeds are incidentals. Carrying passengers is the business in hand. Now the proposal is to give up that business in a large area of Southeastern Massachusetts. Where the proposals as to passenger traffic have been put into effect, this Honorable Court is virtually asked to pass upon the rights of a defunct business to exist.

The Railroad Companies themselves commonly make the distinction here made and refer frequently to passenger lines and freight lines. In the present cause they find it more convenient to apply the term "service" to their operations. Yet they propose and do cease operation of passenger lines in Southeastern Massachusetts.

Your *amicus curiae* respectfully urges that the Commission be enlightened as to its powers to prevent abandonment of a passenger line or the operation thereof, even though freight may still be hauled over the roadbed.

Conclusion.

It is respectfully submitted that the decision of the Circuit Court of Appeals for the Second Circuit should be affirmed and its mandate, hitherto stayed, issue to the District Court of Connecticut.

INHABITANTS OF
THE TOWN OF SCITUATE.
Vernon W. Mabr,
Town Counsel.

APPENDIX.

The Interstate Commerce Act, Act Feb. 1920, c. 91; 41 Stat. 474, sec. 1, as amended; 49 U.S.C.A. sec. 1:

"(17) * * * *Provided, however,* That nothing in this chapter shall impair or affect the right of a State, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except insofar as such requirement is inconsistent with any lawful order of the commission made under the provisions of this chapter."

"(18) * * * *abandonment of lines; certificate required.* — * * * no carrier by railroad subject to this chapter shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the commission a certificate that the present or future public convenience and necessity permit of such abandonment."

SUPREME COURT OF THE UNITED STATES.

No. 7.—October Term, 1939.

Howard S. Palmer, James Lee Loomis and Henry B. Sawyer, Trustees, etc., Petitioners,
vs.
The Commonwealth of Massachusetts.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[November 6, 1939.]

Mr. Justice Frankfurter delivered the opinion of the Court.

October 23, 1935, opened another chapter in the long history of the vicissitudes of the New York, New Haven and Hartford Railroad Company.[1] By filing a petition for reorganization under § 77 of the Bankruptcy Act (47 Stat. 1474, as amended by 49 Stat. 911 and 49 Stat. 1969, 11 U. S. C. § 205), the New Haven invoked the shelter of the United States District Court for the District of Connecticut. There it has since remained. An episode in this new chapter, already four years old, is presented by this case. We brought it here, 306 U. S. 627, because it raises important questions under the railroad bankruptcy law, particularly where it intersects the regulatory systems of the states. The District Court assumed power to supplant the relevant authority of the state—an authority which, apart from proceedings under § 77, has not been conferred by Congress either upon the federal courts or the Interstate Commerce Commission. The Circuit Court of Appeals, one judge dissenting, reversed the District Court, *Converse* v. *Commonwealth*, 101 F. (2d) 48.

A summary of the facts will lay bare the legal issues. On December 28, 1937, the bankruptcy Trustees of the New Haven, acting

[1] Brandeis, "Financial Condition of the New York, New Haven and Hartford Railroad Co." (1907); *The New England Investigation*, 27 I. C. C. 560 (1913); *In re Financial Transactions of the New York, New Haven and Hartford Railroad Co.*, 31 I. C. C. 32 (1914); Report of the Joint New England Railroad Committee to the Governors of the New England States. (Storrow Report.) (1923.)

under the requirements of Massachusetts law,[2] applied to that Commonwealth's Department of Public Utilities for leave to abandon eighty-eight passenger stations.[3] Twenty one hearings were held by the Department on the questions raised by this application. During the pendency of these hearings and before the Department had taken any action, the present litigation was initiated in the New Haven bankruptcy proceedings by creditors of the debtor for an order directing the Trustees to abandon these local services. The Trustees joined in the prayer; while the Commonwealth denied the jurisdiction of the District Court and asked that the proceedings before the Department be allowed to reach fruition. The District Judge ruled that § 77 gave him the responsibility of disposing of the petition on its merits and, having taken evidence, gave the very relief for which the Trustees had applied to the Department and which was still in process of orderly consideration.

Plainly enough the District Court had no power to deal with a matter in the keeping of state authorities unless Congress gave it. And so we have one of those problems in the reading of a statute wherein meaning is sought to be derived not from specific language but by fashioning a mosaic of significance out of the innuendoes of disjointed bits of a statute. At best this is subtle business, calling for great wariness lest what professes to be mere rendering becomes creation and attempted interpretation of legislation becomes legislation itself. Especially is wariness enjoined when the problem of construction implicates one of the recurring phases of our fed-

[2] Mass. Gen. Laws (Ter. Ed.) c. 160, § 128, provides: "A railroad corporation which has established and maintained a passenger station throughout the year for five consecutive years at any point upon its railroad shall not abandon such station . . . nor substantially diminish the accommodation furnished by the stopping of trains thereat as compared with that furnished at other stations on the same railroad, except with the written approval of the department [of Public Utilities] after notice posted in and on said station for a period of thirty days immediately preceding a public hearing thereon."

See also Mass. Gen. Laws (Ter. Ed.) c. 159, § 16, vesting general control over intrastate railway services in the Department of Public Utilities.

[3] The application also sought permission to effect certain other curtailments of passenger service. Some of the stations were situated on the lines of the New Haven, most of them on the lines of the Old Colony Railroad, and some on the lines of the Boston and Providence Railroad.

The New Haven in 1893 leased for 99 years all the properties of the Old Colony, including the Boston and Providence lines which the Old Colony had leased for 99 years in 1888. On June 1, 1936, the New Haven Trustees disaffirmed, as they were empowered to do under § 77, the Old Colony lease. After the disaffirmance the New Haven operated the lines on account of the Old Colony. On June 3, 1936, the Old Colony itself commenced proceedings under § 77. The Trustees of the New Haven were then appointed trustees for the Old Colony.

eralism and involves striking a balance between national and state authority in one of the most sensitive areas of government.

To be sure, in recent years Congress has from time to time exercised authority over purely intrastate activities of an interstate carrier when, in the judgment of Congress, an interstate carrier constituted, as a matter of economic fact, a single organism and could not effectively be regulated as to some of its interstate phases without drawing local business within the regulated sphere.[4] But such absorption of state authority is a delicate exercise of legislative policy in achieving a wise accommodation between the needs of central control and the lively maintenance of local institutions.[5] Therefore, in construing legislation this court has disfavored inroads by implication on state authority and resolutely confined restrictions upon the traditional power of states to regulate their local transportation to the plain mandate of Congress. *Minnesota Rate Cases*, 230 U. S. 352, *cf. Kelly* v. *Washington ex rel. Foss Co.*, 302 U. S. 1.

The dependence of local communities on local railroad services has for decades placed control over their curtailment within the regulatory authorities of the states.[6] Even when the Transportation Act in 1920 gave the Interstate Commerce Commission power to permit abandonment of local lines when the over-riding interests of interstate commerce required it, *Colorado* v. *United States*, 271 U. S. 153,[7] this was not deemed to confer upon the Commission jurisdiction over curtailments of service and partial discontinuances. *Public Convenience Application of Kansas City Southern Ry.*, 94 I. C. C. 691; see *Proposed Abandonment, Morris and*

[4] E. g., *The Shreveport Cases*, 234 U. S. 342; *Wisconsin R. R. Comm.* v. *C., B. & Q. R. R. Co.*, 257 U. S. 563. See I Sharfman, "The Interstate Commerce Commission", pp. 82-86, 219-225. For the careful observance of state interests in applying the Shreveport doctrine, see *Ill. Cent. R. R. Co.* v. *Public Utilities Comm.*, 245 U. S. 493 and *Florida* v. *United States*, 282 U. S. 194.

[5] See Clark, "The Rise of a New Federalism", *passim*.

[6] The controlling Massachusetts statute has been in force since 1911. But Massachusetts has exercised control over its railroads through administrative machinery ever since the famous Adams Commission in 1869. See First Annual Report, Board of Railroad Commissioners of Massachusetts, Public Document No. 40, pp. 3-12 (1870); Hadley, "Railroad Transportation" (1885 ed.) pp. 136-139.

[7] For illustration of the scrupulous regard for local authority and local interests shown by the Commission in the exercise of its control over abandonments, see II Sharfman, "The Interstate Commerce Commission", pp. 264-269.

Essex Ry. Co., 175 I. C. C. 49. If this old and familiar power of the states was withdrawn when Congress gave district courts bankruptcy powers over railroads, we ought to find language fitting for so drastic a change.

We are asked to find it in § 77(a) granting to the bankruptcy court "exclusive jurisdiction of the debtor and its property wherever located",[8] and in § 77(c)(2) permitting the trustees, subject to the Court's control, "to operate the business of the debtor".[9] In order to expedite the reorganization of insolvent railroads, such broad and general provisions doubtless suffice to confer upon the district courts power appropriate for adjusting property rights in the railroad debtor's estate and, as to such rights, beyond that in ordinary bankruptcy proceedings. *Cf. Continental Bank etc.* v. *Rock Island Ry.*, 294 U. S. 648. But the District Court claimed power over the carrier's relation to the state. It has become the settled social policy both of the states and the nation to entrust the type of public interest here in question to expert administrative agencies because of "the notion", as Judge Learned Hand pointed out below, "that a judge is not qualified for such duties."[10]

Not only is there no specific grant of the power which the District Court exercised, but the historic background of § 77, the considerations governing Congress in its enactment, and the scheme of the legislation as disclosed by its specific provisions reject the claim. Until the amendment of March 3, 1933, railroads were outside the Bankruptcy Act.[11] But the long history of federal railroad receiverships, with the conflicts they frequently engendered between the federal courts and the public, left an enduring convic-

[8] § 77(a), 47 Stat. 1474, as amended in 1935 by 49 Stat. 911, 11 U. S. C. § 205(a) provides so far as here relevant: "If the petition is so approved, the court in which such order is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located, and shall have and may exercise in addition to the powers conferred by this section all the powers, not inconsistent with this section, which a Federal court would have had if it had appointed a receiver in equity of the property of the debtor for any purpose."

[9] "The trustee or trustees so appointed . . . shall have . . . subject to the control of the judge and the jurisdiction of the Commission as provided . . . the power to operate the business of the debtor." § 77(c)(2), 47 Stat. 1475, as amended by 49 Stat. 914-15, 11 U. S. C. § 205(c)(2).

[10] See *Converse* v. *Commonwealth*, 101 F. (2d) 48, at 51.

[11] See H. Rep. No. 1897, 72d Congress, 2d Session, p. 5.

tion that a railroad was not like an ordinary insolvent estate.[12] Also an insolvent railroad, it was realized, required the oversight of agencies specially charged with the public interest represented by the transportation system. Indeed, when, in the depth of the depression, legislation was deemed urgent to meet the grave crisis confronting the railroads, there was a strong sentiment in Congress to withdraw from the courts control over insolvent railroads and lodge it with the Interstate Commerce Commission.[13] Congress stopped short of this remedy. But the whole scheme of § 77 leaves no doubt that Congress did not mean to grant to the district courts the same scope as to bankrupt roads that they may have in dealing with other bankrupt estates.

The judicial process in bankruptcy proceedings under § 77 is, as it were, brigaded with the administrative process of the Commission. From the requirement of ratification by the Commission of the trustees appointed by the Court to the Commission's approval of the Court's plan of reorganization the authority of the Court is intertwined with that of the Commission.[14] Thus, in § 77(c) and

[12] See Chapter XXII "Railroad Receiverships" in I Gresham, "The Life of Walter Quintin Gresham, pp. 366-378; Jacobs "The Interstate Commerce Commission and Interstate Railroad Reorganizations", 45 Harv. L. Rev. 855; Lowenthal "The Investor Pays". See also remarks by Senator Wheeler, as Chairman of the Committee on Interstate Commerce, introducing the amendment of 1935, 79 Cong. Rec., Pt. 13, p. 13764.

[13] See 76 Cong. Rec., Pt. 5, p. 5358 (remarks of Representative LaGuardia): "I would like to see the entire reorganization taken from the courts and placed in the Interstate Commerce Commission." The suggestion for administrative receiverships originated with the late Chief Justice Taft, when Circuit Judge, in an address before the American Bar Association. Taft, "Recent Criticism of the Federal Judiciary", Reports of the American Bar Association (1895) 237, 264.

[14] § 77(c)(1) requires the appointment of trustees to be ratified by the Commission; § 77(c)(2) gives the Commission supervision over the compensation paid to trustees and their counsel; § 77(c)(3) permits the issuance of trustees' certificates only with the Commission's approval; § 77(c)(9) permits the Commission, on request of the court, to investigate facts pertaining to mismanagement of the debtor; § 77(c)(10) empowers the Commission to set up accounts for the allocation of earnings among the various portions of the debtor's lines; § 77(c)(11) empowers the Commission to file reports as to the debtor's property, prospective earnings, etc., and gives to the facts stated in such reports a presumption of correctness; § 77(c)(12) gives the Commission supervision over allowances for the expenses of various parties in interest in connection with the reorganization proceedings; §§ 77(d) and 77(e) give to the Commission control over any proposed plan of reorganization; § 77(p) gives to the Commission control over the solicitation of proxies or deposit agreements.

See also H. Rep. No. 1897, 72d Congress, 2d Session, pp. 5-6; H. Rep. No. 1283, 74th Congress, 1st Session, pp. 3-5; S. Rep. No. 1336, 74th Cong., 1st Session, pp. 4-6; Report, Federal Coordinator of Transportation, 1934, H. Doc. No. 89, 74th Cong., 1st Session, pp. 100-101; 76 Cong. Rec., Pt. 5, pp. 5108-5110; 79 Cong. Rec., Pt. 12, p. 13301, Pt. 13, pp. 13764, 13767.

§ 77 (o) the power of the district courts to permit abandonments is specifically conditioned on authorization of such abandonments by the Commission. In view of the judicial history of railroad receiverships and the extent to which § 77 made judicial action dependent on approval by the Interstate Commerce Commission, it would violate the traditional respect of Congress for local interests and for the administrative process to imply power in a single judge to disregard state law over local activities of a carrier the governance of which Congress has withheld even from the Interstate Commerce Commission, except as part of a complete plan of reorganization for an insolvent road.[15] About a fourth of the railroad mileage of the country is now in bankruptcy.[16] The petitioners ask us to say that district judges in twenty-nine states have effective power, in view of the weight which often attaches to findings at *nisi prius*, to set aside the regulatory systems of these twenty-nine states with all the consequences implied for those communities. Congress gave no such power.

Arguments of convenience against denial of the existence of this power have been strongly pressed upon us. Continuance of state control over these local passenger services will, it is urged, impair the bankruptcy court's power to formulate a reorganization plan for the approval of the Interstate Commerce Commission. Such embarrassments, due either to the time required for exhaustion of the orderly state procedure or to the financial losses that may be involved in the continuance of local services until duly terminated by the state, may easily be exaggerated. It is not without significance that after four years no reorganization plan for the New Haven has yet been evolved. Perhaps it is no less true that amenability to state laws will serve as incentive to the formulation of

---

[15] "Upon confirmation of the plan, the debtor and any other corporation or corporations organized or to be organized for the purpose of carrying out the plan, shall have full power and authority to, and shall put into effect and carry out the plan and the orders of the judge relative thereto . . . . the laws of any State or the decision or order of any State authority to the contrary notwithstanding." § 77 (f).

The records of the Interstate Commerce Commission disclose that eight plans of reorganization have thus far been filed with the District Court in the New Haven proceedings and transmitted to the Interstate Commerce Commission. Proceedings before the Commission had progressed to the point where an examiner's report was filed but the report was withdrawn for further hearings. The present record fails to show what, if any, disposition of the Old Colony lines any of these plans proposed to make.

[16] On October 23, 1939, there were 61,292.69 miles of railroad in bankruptcy proceedings under § 77. This mileage includes lines in 29 states.

reorganization plans which, on approval by the Commission, do supplant state authority. But, in any event, against possible inconveniences due to observance of state law we must balance the feelings of local communities, the dislocation of their habits and the over-riding of expert state agencies by a single judge sitting, as in this case, in another state, removed from familiarity with local problems, and not necessarily gifted with statesman-like imagination that transcends the wisdom of local attachments.

Other arguments, drawn from the legislative history of § 77 and from the general equity powers conferred by § 77(a) and § (77)(c),(2),[17] were urged but we deem it unnecessary to say more. The decree below is

Affirmed.

Mr. Justice BUTLER took no part in the consideration and decision of this cause.

A true copy.

Test:

Clerk, Supreme Court, U. S.

[17] *In Re Tyler*, 149 U. S. 164, and other decisions of this Court cited by petitioners, deal with attempts at "physical invasion" of the properties held in the custody of a Federal court. See 149 U. S. at 182. § 65 of the Judicial Code (36 Stat. 1104, 28 U. S. C. § 124) decisively indicates that Congress did not intend that those who operate a business under the control of a federal court should be immune from the regulatory authority of the several states any more than they are from their taxing power.